

BID PACKAGE AND CONTRACT DOCUMENTS

SPECIFICATIONS NO. _____



CITY OF GLENDALE, CALIFORNIA

Dated as of _____, 20__

Project Manager Name _____

Address _____

Phone: _____

Fax: _____

E-Mail: _____

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NOTICE INVITING BIDS

NOTICE is hereby given that the City of Glendale ("City") will receive sealed bids, until the bid deadline established below for the following work of improvement:

[NAME OF PROJECT]

SPECIFICATIONS NO. ____

Bid Deadline: Submit before 2:00 p.m. on Wednesday, _____ [Insert date]

Bids to be Submitted in Duplicate to:
Office of City Clerk

Bids Opening: 2:00 p.m. on Wednesday, _____ [Insert date]
at the City Council Chambers, 633 E. Broadway, Glendale, CA 91206

NO LATE BIDS WILL BE ACCEPTED.

Bidding Documents Available: (Specifications and drawings) [Insert Date/Time]
Office of _____, City of Glendale, CA 91206

[Optional: Mandatory Pre-Bid Conference:

Date/Time [Insert date and time] – at least 5 days after publication of Notice

Location: [Insert location]

City of Glendale Contact Person: [Insert name, fax no. & e-mail info]

Other Bidding Information:

1. Bidding Documents: Bids must be made on the Proposal Form contained herein. Bidding Documents may be obtained in the Offices of the _____ [Address], Glendale, CA 91206 where they may be examined and copies obtained. [Option for smaller projects: The initial set of specifications and drawings shall be provided at no charge.] Costs of a duplicate set of specifications and drawings shall be \$ _____ per set, including tax. The cost of said specifications and drawings is non-refundable and purchased specifications and drawings need not be returned. Drawings and specifications may be mailed for an additional charge of \$ _____.

2. [Optional: Director's Estimate. A Director's Estimate of the cost of construction of this Work has been prepared. Said estimate is in the range of \$ _____ to \$ _____.] This Work must be completed within _____ calendar days from the date of commencement as established by the City's written Notice to Proceed.

3. Acceptance or Rejection of Bids. The City reserves the right to reject any and all bids, to award all or any individual part/item of the bid, and to waive any informalities, irregularities or technical defects in such bids and determine the lowest responsible bidder, whichever may be in the best interests of the City. No late bids will be accepted, nor will any oral, facsimile or electronic bids be accepted by the City.

4. [Optional: Mandatory Pre-Bid Conference and/or Job Walk. A pre-bid job walk will be held at the project site at 2:00 p.m. on _____ [Date/Month/Year – at least 5 days after publication of Notice].

5. Contractor's License. At the time of submission of the Bid, and at all times during performance of the Work, Contractor is required to possess a proper license in accordance with the provisions of Chapter 9, Division 3 Sections 7000 et seq. of the Business and Profession Code.

Pursuant to Section 3300, of the Public Contract Code, the classification of the bidder's Contractor's License shall be "_____". Failure of a bidder to obtain adequate licensing at the time the contract is awarded shall constitute a failure to execute the Contract and shall result in the forfeiture of the Bidder's Bond.

For federally funded projects, the Contractor shall be properly licensed at the time of award.

6. Bid Forms and Security: Each bid must be made on the proposal form obtainable at the Offices of the _____. Each bid shall be accompanied by a cashier's check or certified check drawn on a solvent bank, payable to "City of Glendale", for an amount equal to ten percent (10%) of the total maximum amount of the bid. Alternatively, a satisfactory corporate surety bid bond for an amount equal to ten percent (10%) of the total maximum amount of the bid may accompany the bid. Said security shall serve as a guarantee that the successful bidder will, within fourteen (14) calendar days from the date of the award of the contract, enter into a valid contract with the City for said Work in accordance with the Contract Documents.

7. Bid Irrevocability. Bids shall remain open and valid for sixty (60) calendar days after the award of the Contract.

8. Prevailing Wage Resolution. Bidders are hereby notified that in accordance with the provisions of the Labor Code of the State of California, the City Council of the City has ascertained and determined by Resolution No. 18,626 (as amended), the general prevailing rate of per diem wages of a similar character in the locality in which the Work is performed and the general prevailing rate for legal holiday and overtime Work for each craft or type of worker needed in the execution of agreements with the City. Said resolution is on file in the Office of the City Clerk and is hereby incorporated and made a part

hereof by the same as though fully set forth herein. Copies of said resolution may be obtained at the Office of the City Clerk.

9. Substitution of Securities. Pursuant to California Public Contract Code Section 22300, substitution of securities for withheld funds is permitted in accordance therewith.

[The following Paragraphs 10 & 11 for Federal-Aid Contracts only.] [For Traffic & Transportation Projects, use Cal-Trans DBE Notification]

10. DBE Participation [Federal-Aid Contracts only]. The U.S. Dept. of Transportation Regulations found that 49 CFR Part 26 shall apply to this contract. A disadvantaged business enterprise ("DBE") contract goal of ____% has been established for this contract. This goal must be met or good faith efforts to meet this goal must be demonstrated in order for a bid to be considered responsive. The bidder's attendance at the pre-bid conference shall be considered in determining good faith efforts. Bidder shall ensure that all the DBE's be afforded full opportunity to compete for subcontracts Work and shall not be discriminated against on the grounds of race, color, or national origin

11. Prevailing Wages [Federal-Aid Contracts only]. This project is funded, in part, with federal funds and is therefore a "public work" as defined in Labor Code Section 1720. Contractor awarded this contract and subcontractors and all subcontractors of any tier shall not pay less than the minimum prevailing rate of per diem wages for each craft, classification, or type of worker needed to execute the contract. The director of industrial relations of the State of California, pursuant to California Labor Code and the United States Secretary of Labor, pursuant to the Davis-Bacon Act have determined the general prevailing rates of wages in the locality in which the Work is to be performed. The rates determined by the California Director of Industrial Relations are available online at www.dir.ca.gov/Dir/S&R/statistics_research.html. Davis-Bacon wage rates are available online at www.access.gpo.gov/davisbacon/. To the extent that there are any differences in the federal and state prevailing wage rates for similar classifications of labor, awarded contractor and its subcontractors shall pay the highest wage rate.

Dated this ____ day of _____, 200____, City of Glendale, California.

City of Glendale, California.

Ardashes Kassakhian, City Clerk of the City of Glendale.

INSTRUCTIONS TO BIDDERS

1. CONTRACTOR'S LICENSE

The Bidder must possess a valid State of California Contractor's License in the classification specified in the Notice Inviting Bids at the time of the Bid Deadline and at all times during the performance of the work, except as otherwise provided in California Business and Professions Code Section 7028.15.

2. INTERPRETATION OF BIDDING DOCUMENTS, SPECIFICATIONS AND ADDENDA

A. If any Bidder contemplating submitting a Bid is in doubt as to the true meaning of any part of the Bidding Documents, or who finds discrepancies, errors or omissions therein or who finds variances in any of the Bidding Documents with applicable law, such Bidder shall at once submit a written request for an interpretation or correction thereof to the City's representative identified in the Notice Inviting Bids, or other designated individual. All Bidders shall submit such written requests to City, preferably on the Bidder's Question Form provided at the end of this instruction to Bidders, not less than ten (10) calendar days prior to the Bid Deadline. The person or entity submitting the request shall be responsible for its prompt delivery to City's Contact Person identified in the Notice Inviting Bids. Any interpretation or correction will be made only by Addendum issued by the City and a copy of such Addendum will be delivered to all Bidders of record. Any Addenda so issued must be acknowledged in the Bid and the cost of performing Work described in the Addenda shall be included in the Bid. Bidder's failure to acknowledge receipt of all Addenda may result in rejection of the Bid as nonresponsive. No person is authorized to render an oral interpretation or correction of any Bidding Documents and no Bidder may rely on any such oral interpretation or correction issued by the City. The City shall not be responsible for any other explanation or interpretation of the Plans or Specifications, or for any oral instructions. City reserves the right to extend the Bid Deadline by issuing an Addendum to interested Bidders no later than 72 hours prior to the Bid Deadline. Bidders shall use complete sets of Bidding Documents in preparing Bids; City shall not assume responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

B. Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose. Each Bidder shall ascertain prior to submitting a Bid that the Bidder has received all Addenda issued and the Bidder shall acknowledge their receipt in the Bid.

3. OBTAINING DRAWINGS AND DOCUMENTS

Bidder may secure Bidding Documents ONLY from the location specified in the Notice Inviting Bids. City will maintain a list of Bidders who obtained Bidding Documents ("Interested Bidders"). Only Interested Bidders shall receive Addenda, if so issued.

4. PROPOSAL FORMS - SUBMITTAL

A. The proposal shall be made on the forms provided herein with all blank spaces properly filled in. All forms required to be submitted with the Bid are listed in the Bidder's Proposal form at page F-1.

B. The phraseology shall not be changed, and no additions shall be made to the items mentioned herein. Unauthorized conditions, exemptions, limitations, or provisions attached to a proposal will render it informal and may cause its rejection. All forms requiring specific information shall be completed with all applicable information for a bid to be considered responsive. Special attention should be given to completing:

1. Bidder's Statement of Qualifications; and

2. Designation of Subcontractors

C. Include all proposal forms, properly executed, intact and in duplicate (original and photocopy) form. Enclose the proposal in a sealed envelope; type or print on the envelope "Proposal for" followed by the title and Specifications Number and the date and time of Bid opening as they appear on the cover of this Specifications book, and the Bidder's name and address. The envelope may be mailed, hand delivered, or delivered by courier or package delivery service.

D. Proposals hand delivered, delivered by courier or package delivery service shall be presented to:

City Clerk
City of Glendale
613 E. Broadway, Room 110
Glendale, CA 91206

E. Proposals received after the Bid Deadline or at any place other than the Office of the City Clerk will not be considered.

5. PROPOSAL FORM

A. The full name, business address, zip code, and business telephone number, with area code of the individual, partnership, joint venture, or corporation submitting the proposal shall be typewritten or legibly printed on the proposal. The Bidder shall sign the proposal with his/her usual wet ink signature.

B. An individual submitting a proposal or a partner signing for a partnership shall sign in the presence of a Notary Public and the notarial acknowledgement shall be attached to the proposal.

C. A partner shall sign for a partnership and the names and addresses of all partners shall be given.

D. An officer shall sign for a corporation, in the presence of a Notary Public the corporate name shall be attested by the corporate seal, and the names and titles of all officers of the corporation shall be given. A signature other than a corporate officer's will be accepted if an authenticated power of attorney is attached.

6. PROPOSAL FORM - PRICES

A. The Bidder shall include in his/her Bid price(s) any and all expense or costs that may be necessary to complete the project in accordance with the requirements of the Contract.

B. The Bidder shall state for each item on the proposal form, in clearly legible figures, the unit price and item total or lump sum, as the case may be, for which he/she proposes to supply labor, materials, and equipment and to perform the Work. Bids must not contain any erasures, interlineations, strike-throughs or other corrections unless the same are suitably authenticated by affixing in the margin immediately opposite such erasure or correction the initials of the person(s) signing the Bid. If any Bid, or portions thereof, is determined by the City to be illegible, ambiguous or inconsistent, City may reject such a Bid as being non-responsive.

C. In the case of a unit price item, the amount set forth, as the item total shall be the product of the estimated quantity times the unit price Bid. In the event of a discrepancy between the unit price Bid and the item total, the unit price shall prevail; however, if the unit price is ambiguous, unintelligible, or uncertain for any cause, or is omitted, or is the same amount as the entry for the item total, then the item total shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the

unit price. Where so indicated by the makeup of the Bid form, sums shall be expressed in both words and figures, and in case of discrepancy between the two, the amount written in words shall govern.

D. All requested Alternates shall be Bid. If no change in the Base Bid is required, enter "No Change"

7. BID SECURITY

A. Each Bid shall be accompanied by cash or a cashier's check or a certified check, drawn on a responsible bank doing business in the United States payable to the City, or a satisfactory Bid Bond in favor of the City executed by the Bidder as a principal and a California admitted surety company (as defined by California Code of Civil Procedure §§995.120 and 995.311) as surety ("Bid Security").

B. The surety or sureties on a Bid Bond must be satisfactory to the City Attorney. The City will reject a surety bond obtained from any company not holding Certificate of Authority from the U.S. Secretary of the Treasury under the Act of Congress approved July 30, 1947, (31 U.S.C., Secs. 39-01, etc., (as amended from time to time) as acceptable sureties on federal bonds. (Treasury Circular 570).

C. Bid Security shall be in an amount not less than 10% of the total amount of the Bid, including alternative(s). Any Bid submitted without Bid Security will be rejected as non-responsive. The Bid Security shall be given as a guarantee that the successful Bidder shall execute the Contract and shall provide the insurance, bonds and other required forms within fourteen (14) calendar days after award of the Contract. Bidders will be entitled to return of Bid Security provided, however, that a successful Bidder will forfeit Bid Security in the event that the successful Bidder withdraws its bid prior to the expiration of sixty (60) calendar days after award of the Contract; or attempts to withdraw its bid when the requirements of Public Contract Code §§5101 *et seq.* are not met; or refuses or fails to execute said Contract and provide the required bonds, insurance or certificates within ten (10) calendar days after award of the Contract. In such event, if City awards the Contract for the Work to the next lowest responsible bidder, the amount of the lowest responsible Bidder's Bid Security shall be applied to the Contract Price differential between the lowest bid and the second lowest bid and the surplus, if any, will be returned to the lowest Bidder. If the City rejects all other bids presented and re-advertises, the lowest Bidder's Bid Security may be used to offset the City's cost of readvertising and receiving new Bids and the surplus, if any, will be returned to the lowest Bidder.

D. The Bid Security shall be held for sixty (60) calendar days after award of the Contract or until posting by the successful Bidder of the payment and performance bonds, proof of insurance, return of executed copies of the Contract and necessary certification(s), whichever first occurs, at which time the Bid Security will be returned to all Bidders.

E. If a Bid Bond is to be submitted, Bidder shall use the form entitled "Bid Bond" contained in the Bid Documents at page F-6, which Bid Bond shall be properly executed and acknowledged by the bidder and by a corporate surety authorized to transact such business in the State of California.

F. Such bond shall be accompanied by a power of attorney from the surety company authorizing the person executing the bond to sign on behalf of the company. If the bond is executed outside the State of California, all copies of the bond must be countersigned by a California representative of the surety. The signature of the person executing the bond shall be acknowledged by a Notary Public as the signature of the person designated in the power of attorney.

G. Any alteration of said form of Bid Bond, or imperfection in the execution thereof, as herein required, will render it informal and may, at the option of the City, result in the rejection of the proposal under which the Bid Bond is submitted.

8. BIDDER'S STATEMENT OF QUALIFICATIONS

A. Each Bidder shall be required to complete, execute and submit with its Bid, the form entitled "Bidder's Statement of Qualifications." Notwithstanding the provisions of Paragraph 21 herein, the Bidders' Statement of Qualification and financial statements shall not be public records. All information required by a Bidder's Qualifications Statement shall be completely and fully provided. If no information is to be filled in a blank space, then write "none". Any bid not accompanied by a Bidder's Statement of Qualification form completed with all information required may render the Bid non-responsive. If the City determines that any information provided by a Bidder in the Bidder's Statement of Qualification is false or misleading, or is incomplete so as to be false or misleading, the City may reject the Bid submitted by such Bidder as being non-responsive.

B. A responsible bidder is a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform fully the requirements of the contract documents. In selecting the lowest responsible bidder, consideration will be given not only to the financial standing but also to the general competency of the bidder for the performance of the work covered by the bid including, but not limited to, the experience of the bidder in construction of public buildings for public agencies. By submitting a bid, each bidder agrees that the City, in determining the successful bidder and its eligibility for the award, may consider the bidder's experience with similar types of construction projects and facilities, conduct and performance under other contracts, financial condition, reputation in the industry, and other factors which could affect the bidder's performance of the work.

C. Glendale Ordinance No. 5544 adds Chapter 4.14 to the Glendale Municipal Code, 1995, establishing standards of responsibility and grounds for debarment for contractors who bid on public works contracts. Chapter 4.14 applies to all contracts awarded by, executed by or entered into by the City. Each Bidder is advised that the standards of Chapter 4.14 will be strictly enforced by the City.

9. DESIGNATION OF SUBCONTRACTORS

A. List of Subcontractors. Each Bid shall include a list of proposed Subcontractors in accordance with the Subletting and Subcontracting Fair Practices Act (California Public Code Sections 4100, *et seq.*), for all Subcontracts in excess of one-half of one percent of the total Bid. City has furnished a form for this purpose. The City may request Bidders to submit additional information regarding the experience and qualification of listed Subcontractors, which, if requested, shall be provided within 24 hours after City's written request.

B. Work of Subcontractors. The organization or arrangement of the Specifications and Drawings shall not limit the extent of the Work for the Contract Documents. Accordingly, all Bidders are encouraged to disseminate all of the Specifications, Drawings and other Contract Documents to all persons or entities submitting sub-bids to the Bidder. The omission of any portion or item of Work from the Bid or from sub-bids, which is reasonably inferable from the Contract Documents, shall not be a basis for adjustment of the Contract Price or the Contract Time.

C. Ineligible Subcontractors. The successful Bidder is prohibited from performing Work on the Project with any Subcontractor who is ineligible to perform work on a public works project pursuant to California Labor Code Sections 1777.1 or 1777.7. In submitting its Bid, the Bidder certifies that it has investigated the eligibility of each and every listed Subcontractor and has determined that none is ineligible to perform work pursuant to the above code provisions.

10. CONTRACTOR'S NONCOLLUSION AFFIDAVIT

A Noncollusion Affidavit in the form provided by the City shall be signed under penalty of perjury, certifying that the Bid is not the result of and has not been influenced by collusion. Bidder shall submit this form with its Bid. Any Bid made without such affidavit, or believed to be made in violation of the requirements set forth in the affidavit form, may be rejected.

11. EXAMINATION OF DRAWINGS, SPECIFICATIONS, AND SITE OF WORK

A. The Bidder shall examine carefully the site of the Work contemplated and the proposal, Drawings, and Specifications therefor. The submission of a Bid will be conclusive evidence that the Bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality, and quantities of Work to be performed and materials to be furnished, the difficulties to be encountered, and to the requirements of the Proposal, Drawings, Specifications, and other Contract Documents. The Bidder shall ascertain the locations of the existing utility services, and other underground facilities, and to provide for carrying out his/her operations so as to cause the minimum possible inconvenience to the occupants of property along any streets affected. All Work and costs involved in the safeguarding of the property of others shall be at the expense of the Bidder to whom the Contract may be awarded.

B. The Bidder hereby certifies that he has examined the local conditions, has read each and every clause of the Contract Documents, and that he/she has included all costs necessary to complete the specified Work in his/her Bid prices, and the Bidder agrees that if he/she is awarded the Contract he/she will make no claim against the City based upon ignorance of local conditions or misunderstanding of any of the provisions of the Contract. Should the conditions turn out otherwise than anticipated by him/her, the Bidder agrees to assume all risks incident thereto.

12. PRICES AND PAYMENTS

Approximate quantities listed in the Notice to Contractors and quantities if listed for unit price items on the Bidding form, are estimates given for comparing Bids, and no claim shall be made against the City for excess or deficiency therein, actual or relative. Payment at the prices agreed upon will be in full for the completed Work and will cover materials, supplies, labor, tools, equipment, and all other expenditures incident to a satisfactory compliance with the Contract, unless otherwise specifically provided.

13. SUBSTITUTIONS

[City staff: *Select one of the following alternatives:*]

[Option 1] No requests for substitution of any material, device, product, equipment, fixture, form, or type of construction shall be considered by City prior to award of the Contract. Bidders shall submit all requests for substitution and substantiating data within forty-five (45) calendar days from the date of the Notice to Proceed. Bidder shall refer to the appropriate provisions of the General Conditions for additional information regarding substitutions. Authorization of a substitution is solely within the discretion of the City.

[Option 2] Bidders wishing to obtain City's authorization for substitution of a material, product or equipment, shall submit all requests for substitution, including all data necessary to demonstrate acceptability, a minimum of ten (10) calendar days prior to the Bid Deadline. Approval of any such substitution shall be made by Addendum issued by the City as described in Paragraph 2 above. Bidders shall refer to the appropriate provisions in the General Conditions for additional requirements for substitutions. In the absence of a written Addendum prior to the Bid Deadline or a change order approving the request after Contract award, a request for substitution shall be deemed denied.

14. RETURN OF IMPROPER BIDS

Bids submitted after the Bid Deadline are non-responsive and shall be returned to the Bidder unopened. Oral, telephonic, telegraphic, facsimile or electronically transmitted Bids shall not be considered unless the Notice Inviting Bids expressly permits such means of transmittal.

15. WITHDRAWAL OF BIDS

A Bidder may withdraw its Bid either personally or by written request any time prior to the scheduled Bid Deadline by notice to the City's Contact Person designated in the Notice Inviting Bids. If such notice is written, it shall be signed by the Bidder and shall be date-stamped and time-stamped by the City upon receipt. Withdrawn Bids may be resubmitted before the Bid Deadline provided that they are in full conformance with these Instructions to Bidders. Once submitted, all Bids are irrevocable, except as otherwise provided by law. Requests for withdrawal of Bids after the Bid Deadline shall be made only in accordance with California Public Contract Code § 5100, *et seq.* Bidder agrees by submitting a Bid that such Bid shall remain open, is irrevocable, and may not be modified, withdrawn or cancelled for a period of sixty (60) days after award of the Contract.

16. OPENING AND EVALUATION OF BIDS

A. Bid Opening and Tabulation. The Bids shall be opened and read in public after the Bid Deadline has expired at the time and location listed in the Notice Inviting Bids. A tabulation of all Bids received will be available for public inspection at _____ during regular business hours for a period of not less than thirty (30) calendar days following the Bid Opening. The City reserves the right to accept or reject any or all Bids and be the sole judge regarding the suitability of the products, services or supplies offered; and/or to waive any irregularities or informalities in any Bids or in the bidding process. The City further reserves the right to purchase all or fewer than all items or quantities of each item listed in the Bidding Documents. The award of the Contract, if made by the City, shall be to the lowest responsive and responsible Bidder. If Alternate Bid Items are called for the lowest Bid shall be determined according to Paragraph 19 below.

B. Evaluation of Bids

1. Mandatory Qualifications. A Bid shall be rejected if the Bidder fails to meet the essential requirements for qualification. As part of the Bidder's Qualification Statement, each Bidder must establish that it: (1) has successfully completed at least _____ (_____) similar project(s) involving similar work within the last _____ (_____) years with a cost equal to or in excess of the Bidder's Bid; and (2) has successfully completed at least _____ (_____) public works project(s).
2. Responsive Bid. A responsive Bid is a Bid which conforms, in all material respects, to the Bidding Requirements and Contract Documents.
3. Responsible Bidder. A responsible Bidder is a Bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform fully the requirements of the Contract Documents.
4. Competency of Bidders. In selecting the lowest responsible Bidder, consideration will be given not only to the financial standing but also to the general competency of the Bidder for the performance of the Work covered by the Bid including, but not limited to, the experience of the Bidder in construction of public works for public agencies. By

submitting a Bid, each Bidder agrees that the City, in determining the successful Bidder and its eligibility for the award, may consider the Bidder's experience with similar types of construction projects and facilities, conduct and performance under other contracts, financial condition, reputation in the industry, safety record and protocols and other factors which could affect the Bidder's performance of the Work.

17. AWARD OF CONTRACT

The City reserves the right to reject any or all proposals and to waive any or all information or technical defects, as the interest of the City may require. Award of Contract or rejection of Bid proposals will be made by the City within sixty (60) calendar days following the Bid opening. City Council meetings are regularly scheduled on Tuesday evenings.

18. BASIS OF AWARD

A. A Contract will be awarded to the lowest responsive and responsible Bidder meeting all requirements set forth in these Bid Documents.

[City Staff: If Bidders Are Required To Bid For Items That May Be Added To Or Deducted From The Scope Of Work, Select One Of The Following Optional Clauses:]

[Option 1] The City will award the Contract based on the lowest Base Bid without consideration of the prices on the additive or deductive items.

[Option 2] The City will award the Contract based on the lowest Base Bid including all alternates.

[Option 3] The City will award the Contract based on the lowest total of the bid prices on the base bid and those additive or deductive items that when taken in order from a specifically identified list of those items in the Bid Form and added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the City before the first bid is opened.

[Option 4] The City will award the Contract based on the lowest bid in a manner that prevents any information that would identify any of the bidders from being revealed to the City before the ranking of all bidders from lowest to highest has been determined.

B. In making the determination as to lowest responsible Bidder, the following criteria will apply:

1. Qualifications of Bidder: The Bidder shall be a qualified Bidder as required in paragraphs 1 and 8 of this section and as otherwise required in the Contract Documents.
2. Responsive Proposal: The Bidder's proposal shall be responsive to the requirements of the Contract Documents. As stated elsewhere, the City reserves the right to waive any informalities or technical defects of the proposal as the best interests of the City may require.
3. Equalizing Factors: The Bidder's bid price may not wholly determine the lowest responsible Bidder. Contained within the Contract Documents may be listed specific items of equipment performance, equipment design or equipment construction features, which, based on the Bidder's guarantees, would be subject to evaluation, where such evaluation, when combined with the Bid price, would affect the total cost or value or usefulness to the City of the equipment offered. In addition, where applicable, other equalizing factors such as cost of transportation, inspection, office and field engineering (including salaries, travel and subsistence expenses), installation (if any), in

addition to that of Bid price, which would affect the total cost or value or usefulness to the City of the equipment offered, will be taken into consideration in comparing Bids for award of Contract.

19. EXECUTION OF CONTRACT

A. Within fourteen (14) calendar days after being notified by City that he/she has been awarded the Contract, Contractor shall deliver to the City the following documents:

1. Three (3) copies of the Contract in the form included herein, properly executed by Contractor and, if the Contractor is a corporation, evidence of its corporate existence and that the persons signing the Contract are authorized to do so. All signatures must be notarized.
2. Properly executed copies of the (a) Performance Bond, (b) Labor and Material (Payment) Bond, and (c) Maintenance Bond in accordance with the requirements set forth in Article 13 of the General Conditions and in the form shown on Exhibits 1, 2 and 3 attached thereto. All signatures must be notarized.
3. Properly executed policies of (a) the Commercial General Liability Insurance, (b) the Automotive Liability Insurance, (c) the Excess or Liability Insurance, (d) the Waiver of Subrogation Clause, (e) Professional Liability, if required, and (f) the corresponding endorsements for each policy in accordance with the requirements set forth in Article 12 of the General Conditions.

In the event that the fourteenth calendar day falls on Saturday, Sunday, a legal holiday for the State of California, or on days when City Hall is closed, the aforesaid documents shall be delivered by the following Working Day.

After receipt of said documents within said time period or any extension thereof granted by the City, the City shall execute the Contract and return one (1) of said three (3) copies to Contractor for his/her files.

20. PUBLIC RECORDS

City seeks to conduct its business openly. Upon opening, all Bids shall become a matter of public record and shall be regarded as public, with the exception of those elements of each Bid that are identified by the Bidder and plainly marked as "trade secret," "confidential," or "proprietary," including any Statement of Qualifications and financial statements to be submitted by Bidders. Each element of a Bid which a Bidder desires not to be considered a public record must be clearly marked as set forth above, and any blanket statement (i.e. regarding entire pages, documents, or other, non-specific designations) shall not be sufficient and shall not bind the City in any way whatsoever. If City receives a request from a third party to make a Bid available for inspection and copying the City will notify the Bidder of the request. If a Bidder instructs the City that the information is not to be released, City will withhold the information, provided, the Bidder expeditiously seeks a protective order from a court of competent jurisdiction to prevent such release. If disclosure is required under the California Public Records Act or otherwise by law (despite the Bidder's request for confidentiality), the City shall not in any way be liable or responsible for the disclosure of any such records or part thereof. Bidder shall indemnify, defend (including Bidder's providing and paying for legal counsel for City), and hold harmless City, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, fines, penalties, costs, or expenses arising out of or alleging City's refusal to publicly disclose one or more records that Bidder identifies as protectable, or asserts is protectable.

[Paragraphs 22-30 for Federal-Aid Contracts only]

21. **ACKNOWLEDGEMENT OF NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246).**

The Bidder shall sign the Acknowledgement of Notice Requirement for Affirmative Action to Ensure Equal Employment Opportunity.

22. **DEBARMENT AND SUSPENSION CERTIFICATE FROM BIDDER AND CERTAIN SUBCONTRACTORS.**

A. **Policy.**

Unless otherwise permitted by law, any person or firm that is debarred, suspended, or voluntarily excluded from Federal-Aid Contracts may not take part in any federally funded transaction, either as a participant or a principal, during the period of debarment, suspension, or voluntary exclusion. Therefore, the City may not enter into any transaction with any such debarred, suspended, or voluntarily excluded persons or firms during said period.

A certification process has been established by 49 CFR Part 29, as a means to ensure that debarred, suspended or voluntarily excluded persons or firms do not participate in Federally assisted projects. The inability to provide the required certification will not necessarily result in denial of participation in a covered transaction. A person or firm that is unable to provide a positive certification as required by this solicitation, must submit a complete explanation attached to the certification. Failure to furnish a certification or an explanation may disqualify that person or firm from participating in the Work.

B. **Submission Requirements.**

Each Bidder shall complete the certification entitled, "Certification of Primary Participant Regarding Debarment, Suspension and other Responsibility Matters," included herein, for itself and its principals, and submit said certification with its Bid. Failure to comply may result in rejection of the Bid.

If the Bidder plans to use Subcontractors on the Project, the Bidder shall cause all Subcontractors with contracts in excess of \$100,000, to complete a certification for lower-tier participation and submit said certification within ten (10) days (excluding Saturdays, Sundays and legal holidays) after contract award.

If Bidder or Subcontractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, immediate written notice must be provided to the City.

23. **DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION.**

It is the policy of the City to provide Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26, an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DBE requirements of 46 CFR Part 26 apply to the Contract.

A. **To be eligible for an award of Contract each Bidder shall complete, sign and submit as part of the Bid the Local Agency DBE INFORMATION FORM included in Section C. The Local**

Agency DBE INFORMATION FORM, when signed, will signify the Bidder's intent to comply with City's DBE Program described in the Bidding and Contract Documents.

- B. Bidder shall also submit the Summary of Bidder's Good Faith Efforts form within (____) Working Days of a request by City, together with additional documentation requested. Failure to submit the required DBE information at the time specified will be grounds for finding that the Bid is non-responsive. All Bidders should be prepared to submit the Summary of Bidder's Good Faith Efforts form within (____) Working Days after submittal of the Bid together with any requested backup documentation. See Supplementary Provisions for complete DBE requirements and procedures.
- C. City hereby notifies all Bidders that it will affirmatively ensure that in any Contract entered in to for the Project, Disadvantaged Business Enterprises will be afforded full opportunity to submit Bids and will not be discriminated against on grounds of race, color, or national origin in consideration for an award.

24. BIDDER'S CERTIFICATE OF COMPLIANCE – INELIGIBLE FOREIGN CONTRACTORS AND SUBCONTRACTORS.

- A. The City shall not consider any Bids submitted by any Contractors, nor consent to subletting any portions of the Project to any Subcontractors, who are citizens or nationals of a foreign country during any period in which such foreign country is listed by the United States Trade Representative as discriminating against U.S. firms in conducting procurements for public Works projects.
- B. Unless otherwise noted by the U.S. Trade Representative, the Country of Japan shall be deemed to be listed as discriminating against U.S. firms in conducting procurements for public works projects.
- C. For the purpose of this provision, any Contractor or Subcontractor who is a citizen or national of a foreign country listed above, or whose company is controlled directly or indirectly by citizens or nationals of a foreign country listed by the U.S. Trade Representative, shall be considered to be a Contractor or Subcontractor of such foreign country.
- D. Bidders shall execute the "Bidder's Certification Regarding Ineligible Foreign Contractors and Subcontractors" form included in the Bidding Documents, attesting to their eligibility, and the eligibility of their proposed Subcontractors, for this Project in accordance with the above provisions.

25. BIDDER'S CERTIFICATE OF COMPLIANCE OR NON COMPLIANCE WITH "BUY AMERICA" REQUIREMENTS.

Pursuant to 49 CFR Part 661, as amended by Section 337 of the Surface Transportation and Uniform Relocation Act of 1987, no federal funds authorized by the Urban Mass Transportation Act of 1964, as amended; 23 U.S.C 103 (e)(4); and Section 14 of the National Capital Transportation Act of 1969 as amended; shall be obligated by the City unless steel and manufacturers' products used in such articles are produced in the United States.

A contractor providing articles which do not meet the above provisions must submit a written request to the City, which may be forwarded to the federal funding agency for the Project; in which

event the federal funding agency may grant such a waiver if the federal funding agency determines that:

1. The application of the domestic preference requirements would be inconsistent with the public interest;
2. Materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. The inclusion of a domestic item or domestic material will increase the cost of the contract for the item or material by more than 25 percent.

In compliance with the Buy America Requirements, Bidder shall complete the Certificate of Compliance/Noncompliance included with the Bidding Documents. Failure to complete said certificate appropriately shall render a Bidder nonresponsive to this solicitation and will result in the rejection of the Bid.

26. RESTRICTIONS ON LOBBYING.

As a recipient of federal funds, the City is required to certify compliance with the influencing restrictions and efforts of Bidder to influence federal officials regarding specific procurements in excess of \$100,000.00 that must be disclosed pursuant to section 1352, Title 31, U.S. Code.

The Bidding Documents include the certification form entitled "Certification of Restrictions on Lobbying," the Office of Management and Budget (OMB) Standard Form LLL entitled "Disclosure of Lobbying Activities," and the document entitled "Limitation on Payments to Influence Certain Federal Transactions."

The Bidder shall complete and submit to the City the "Certification of Restrictions on Lobbying" form whether or not any lobbying efforts took place. If the successful Bidder did engage in lobbying activities, then OMB Standard Form LLL "Disclosure of Lobbying Activities" must also be completed and submitted to the City.

27. PARTY AND PARTICIPANT DISCLOSURE FORMS.

In conformance with California Government Code Section 84308, (of the California Political Reform Act) and Title 2, California Code of Regulations Sections 18438 through 18438.8, regarding campaign contributions to members of appointed Boards of Directors, Bidders shall complete the forms included in these Bidding Documents, and submit same as part of the Bid, if applicable. Bidders shall submit one copy of the completed Participant Disclosure form(s) as part of the Bid. Subcontractors shall complete the form entitled "Party Disclosure Form" and shall submit same to Contractor within ten (10) calendar days after award of Contract.

Lobbyists or agents representing a Bidder in this procurement must complete the form entitled "Participant Disclosure Form" and shall submit same to Contractor within ten (10) calendar days after award of Contract.

28. PREVAILING WAGE RATES AND EMPLOYMENT OF APPRENTICES.

- A. Prevailing Wage Rates. The Bidder and all Subcontractors shall utilize the relevant prevailing wage rate determinations in effect on the first advertisement date of the Notice Calling for Bids in preparing the Proposal and all component price quotations. Pursuant to California Labor Code Section 1770, et seq., the Director of the Department of Industrial

Relations of the State of California and the United States Secretary of Labor have determined the general prevailing wage rates in the locality in which the Work is to be performed. Copies of these determinations are maintained in the office of the City Clerk. Said rate schedules are also available on the Internet at "www.dir.ca.gov/DIR/S&R/statistics_research.html" and "www.access.gpo.gov/davisbacon/." If there is a difference in the Federal and State prevailing wage rates for similar classifications of labor, the Contractor and its Subcontractors shall pay the highest wage rate. The wage rate for any classification not listed, but which may be required to execute the Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. To comply with California Labor Code Section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall also comply with the requirements of California Labor Code Section 1773 et seq.

- B. Apprenticeship Committee Contract Award Information. Pursuant to California Labor Code § 1777.5 and Title 8 of the California Code of Regulations § 230, the Contractor and Subcontractors of any tier who are not already approved to train by an apprenticeship program sponsor shall, within ten (10) calendar days of signing the Contract or Subcontract, as applicable, but in any event prior to the first day in which the Contractor or Subcontractor has workers employed on the Project, submit the Public Works Contract Award Information form (DAS Form 140) to the appropriate local apprenticeship committees whose geographic area of operation include the area of the Project and who can supply apprentices to the Project. Contractors and Subcontractors shall also submit a copy of said forms to the City.
- C. Statement of Employer Fringe Benefit Payments. Within five (5) calendar days of signing the Contract or Subcontract, as applicable, the Statement of Employer Payments (DSLE Form PW 26) shall be completed and submitted to the City of each Contractor and Subcontractor of any tier who pays benefits to a third party trust, plan or fund for health and welfare benefits, vacation funds or makes pension contributions. The form must contain, for each worker classification, the fund, plan or trust name, address, administrator, the amount per hour contributed and the frequency of contributions. Training fund contributions shall also be reported in this form.
- D. Notice to Subcontractors. Bidders shall notify all potential Subcontractors submitting price quotations for portions of the Work of the requirements concerning payment of prevailing wage rates, payroll records, hours of Work, and employment of apprentices.

29. **ANTI-DISCRIMINATION.**

It is policy of the City that in connection with all Work performed under contracts, that there shall be no discrimination against any prospective or active employee engaged in the Work because of race, color, ancestry, national origin, religious creed, sex, age or marital status. The Contractor shall comply with all applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act, (California Government Code section 12900, et seq.), California Labor Code section 1735 and The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). The Contractor shall require like compliance by all Subcontractors employed on the Work by such Contractor.

[END OF DOCUMENT]

SAMPLE

BIDDER'S QUESTION FORM
(Please Print)

Fax Bidder's Questions to _____

Project: _____

Specification No.: _____

Name: _____ Phone: (____) _____

Position: _____ Fax: (____) _____

Firm Name: _____

Address: _____

Drawings Reference (Sheet/Detail): _____

Specifications Reference: (Section/Article): _____

Question: _____

Response: _____

By: _____
(Name) _____ (Signature) _____

Firm _____ Title: _____

Date: _____

Note: Please use additional sheets if you need more space for question(s)/response(s)

BIDDER'S PROPOSAL

The undersigned submits this Bid in response to the Notice Inviting Bids issued by the City to construct the Work of the following Project in accordance with the Contract Documents:

City Staff: Insert Project Name and Specifications No.

A. Enclosed herewith and by this reference incorporated herein and made a part of this Bidder's Proposal are the following completed forms:

1. Bidding Form
2. Contractor's Noncollusion Affidavit
3. Bid Security in the following form (*check one*):
☐ Cashier's Check ☐ Certified Check ☐ Bid Bond
4. List of Subcontractors
5. Bidder's Statement of Qualifications
6. Statement of Violations of Federal, State or Local Law, if applicable
7. Statement of Disqualification or Debarment.
8. Pre-Bid Site Inspection Certification

B. Acknowledgment of Addenda. The Bidder shall acknowledge the receipt of Addenda by placing an "X" by each addendum received:

- Addendum No. 1 ☐
Addendum No. 2 ☐
Addendum No. 3 ☐
Addendum No. 4 ☐
Addendum No. 5 ☐

If an Addendum or Addenda have been issued by the City and not noted above as being received by the Bidder, the Bid may be rejected.

C. Inspection of the Work and Contract Documents. Bidder certifies that it has carefully examined and is fully familiar with all of the provisions of the Bidding Documents and said Bidding Documents contain sufficient detail regarding the Work to be performed; that it has notified City of any errors or omissions in the Bidding Documents and/or any unusual site conditions; and that it has carefully checked all words, prices, and statements in this Bid Proposal Form. Bidder hereby certifies that he/she and his/her subcontractors have inspected the site and related drawings and specifications of Work and fully acquainted themselves with all conditions and matters which may in any way affect the Work, time of completion or the costs thereof. Bidder also certifies he/she has observed the designated Contractor Work areas and access routes, if disclosed or shown, as part of the Work in this Contract. Bidder agrees that all costs of Work shown in the Bidding Documents, including work reasonably inferable therefrom and necessary thereto are included in his/her Bid. All Work shown in the Bidding Documents for which a specific line item is not provided in the Bidding Form is included in the Total Base Bid Price. Bidder agrees that City will not be responsible for any errors or omissions on the part of the undersigned in making this Bid Proposal.

D. Forfeiture of Bid Security. Bidder further agrees that, in case of his/her default in executing the required Contract and the required bonds, or furnishing the required insurance, the money payable under the Bid Security accompanying this Bid Proposal shall be applied by the City towards payment of the damage to the City on account of such default, as provided in the Bidding Documents.

E. Period of Irrevocability. Bidder agrees that this Bid shall remain open and shall not be withdrawn for a period of not less than sixty (60) calendar days from the date of award of Contract, or until rejected by the City, whichever period is shorter.

F. Bid Dispute Indemnification. In the event of a Bid dispute based upon the Bidder's submission of this Bid and the City acceptance of same, the Bidder shall indemnify, defend, and hold harmless at its expense, including the provision of legal counsel, the City, its agents, employees, and officers from liability, claims, demands, damages, and costs if such dispute or action arises solely upon the award of a Contract in compliance with federal, state, and local laws.

I hereby certify under penalty of perjury under the laws of the State of California that the representations made herein are true and correct.

Executed this ____ day of _____ at _____, _____ City, _____ State

Name of Bidder
COMPANY NAME:

SIGNED:

PRINT NAME

ADDRESS:

TITLE: _____

CONTACT PERSON:

TELEPHONE NUMBER: () _____

FAX TELEPHONE NUMBER () _____

E-MAIL: _____

CONTRACTOR'S LICENSE NO. _____

LICENSE CLASS _____

EXPIRATION DATE _____

TAX IDENTIFICATION NO. _____

SURETY _____

[CONTINUED ON NEXT PAGE]

Form of Entity of Bidder

Corporation:

State of Incorporation _____

President: _____

Secretary: _____

Partnership:

Name of all Partners: _____

Joint Venture:

Name of all Joint Venturers: _____

Sole Proprietorship:

All d/b/a's: _____

[If the Bidder is a corporation or a limited liability company, enter state or county of incorporation in addition to the business address and include an incumbency certificate executed by a Secretary thereof in the form set forth on the following page listing each officer with signing authority and his/her corresponding office. If the Bidder is a partnership or joint venturer stating that the respective partner or joint venturer agrees to be held jointly and severally liable for any and all of the duties and obligations of the Bidder under the Bid and under any contract arising therefrom. Attach evidence to the Bid Proposal Form that the individual signing has authority to do so.]

BIDDING FORM

Insert Project Name and Specifications No.

BID

BASE BID

Pursuant to and in compliance with your Notice Inviting Bids and Contract Documents relating to the Project: _____ including Addenda Nos. _____ the undersigned bidder, having become thoroughly familiar with the terms and conditions of the Contract Documents and with local conditions affecting the performance and the costs of the Work at the place where the Work is to be done, hereby proposes and agrees to fully perform the Work within the time stated in strict accordance with the Contract Documents (including the furnishing of any and all labor, materials, tools, expendable equipment, and utility and transportation services necessary to fully perform the Work and complete it in a workmanlike manner) for the total Base Bid sum of:

_____ Dollars (\$ _____)

Item No.	Article	Est. Quantity	Unit Price	Total Price
1.				
2.				
3.				

BID TOTAL \$

IF ALTERNATES USED

ALTERNATE BID ITEMS: [BIDDER: PLEASE SPECIFY IF ALTERNATE BID ITEMS ARE PRICED AS LUMP SUM OR UNIT PRICES]

NOTE: A Bidder must bid on each ALTERNATE BID ITEM and must indicate if each alternate is additive (+) or deductive (-).

1. [Scope of Work]: Add or Subtract (circle one)
_____ Dollars (\$ _____)

2. [Scope of Work]: Add or Subtract (circle one)
_____ Dollars (\$ _____)

Respectfully submitted:

Signature

Address

Title

Date

License Number

Date of Expiration

(SEAL - if BID is by a corporation)

Attest _____

Amount of Certified or Cashier's Check or Bid Bond

Name of Bonding Company

INCUMBENCY CERTIFICATE

The undersigned hereby certifies to the City of Glendale that he/she is the duly elected and acting _____ Secretary of _____ (the "Company"), and that, as such, he/she is authorized to execute this Incumbency Certificate on behalf of the Company, and further certifies that the persons named below are the duly elected, qualified and acting officers of the Company, holding on the date hereof the offices set forth opposite their names and are authorized to sign this Bidder's Proposal and Bidding Form

NAME

OFFICE

IN WITNESS WHEREOF, the undersigned has executed this Incumbency Certificate this _____ day of _____.

Secretary

BID BOND

(not necessary when cash, certified or cashier's check accompanies Bid)

KNOW ALL MEN BY THESE PRESENT,

That we, _____, the undersigned Bidder, as Principal and _____, as Surety, our respective heirs, executors, administrators, successors and assigns, are jointly and severally and firmly bound, unto **CITY OF GLENDALE**, hereinafter "Obligee," for payment of the penal sum hereof in lawful money of the United States, as more particularly set forth herein.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Principal has submitted the accompanying Bid for the _____ Project and the Bid must be accompanied by Bid security.

WHEREAS, subject to the terms of this Bond, the Surety is firmly bound unto the Obligee in the penal sum of \$ _____ (**TEN PERCENT (10%)**) of the total amount of the Bid on the base contract work submitted by the Principal to the Obligee, as set forth above.

NOW THEREFORE, if the Principal shall not withdraw said Bid within the period specified in the Bidding Documents, or, if no period be specified, for sixty (60) calendar days after award of the Contract for the Project; or if the Principal does not attempt to withdraw the Bid when the requirements of Public Contract Code §5101 *et seq.* are not met; or if the Principal is awarded the Contract, and shall within the period specified therefore, or if no period be specified, within fourteen (14) calendar days after award of the Contract, enter into a written contract with the Obligee, in accordance with the Bid as accepted, and give such bond(s) with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such Contract and for the payment for labor and materials used for the performance of the Contract and the required insurance documentation, then the above obligation shall be void and of no effect, otherwise to remain in full force and effect.

In the event that suit or other proceeding is brought upon this Bond by the Obligee, the Surety shall pay to the Obligee all costs, expenses and fees incurred by the Obligee in connection therewith, including without limitation, attorneys' fees and costs.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this ____ day of _____, 20____ by their duly authorized agents or representatives

Bidder:
(Corporate Seal)

(Principal's Name)

By:

(Signature)

(Typed or Printed Name and Title)

(Address)

[CONTINUED ON NEXT PAGE]]

Surety:
(Corporate Seal)

(Surety's Name)

By: _____
(Signature of Attorney-in-Fact for Surety)

(Attach Attorney-in-Fact Certificate)

(Typed or Printed Name)

(Address of Surety's Office where Bond is issued)

(Area Code and Telephone Number of Surety)

NOTARIAL CERTIFICATION OF ATTORNEY IN FACT AND
SEAL OF SURETY MUST BE ATTACHED

BIDDER'S STATEMENT OF QUALIFICATIONS

1. ORGANIZATION

- 1.1 How many years has your organization been in business as a Contractor?
- 1.2 How many years has your organization been in business under its present name?
 - 1.2.1 Under what other names has your organization operated?
- 1.3 If your organization is a corporation or a limited liability company, answer the following:
 - 1.3.1 Date of incorporation/organization:
 - 1.3.2 State of incorporation/organization:
 - 1.3.3 Corporate ID number:
 - 1.3.4 Name of President or Manager(s):
 - 1.3.5 Agent for Service of Process:
- 1.4 If your organization is a partnership, answer the following:
 - 1.4.1 Date of organization/formation:
 - 1.4.2 Type of partnership (if applicable):
 - 1.4.3 Name(s) of general partner(s):
 - 1.4.4 List all states in which you are registered and state ID numbers for each:
- 1.5 If your organization is individually owned, answer the following:
 - 1.5.1 Date of organization:
 - 1.5.2 Name of owner:
- 1.6 If the form of your organization is other than those listed above, describe it and name the principals:

2. LICENSING

- 2.1 List jurisdictions in which your organization is legally qualified to do business, indicate registration or license numbers, and category of license, if applicable.
- 2.2 List jurisdictions in which your organization's partnership or trade name is filed.
- 2.3 List any licensing suspensions and/or violations assessed against your organization within the past five years.

3. EXPERIENCE

- 3.1 List the categories of Work that your organization normally performs with its own personnel.
- 3.2 Claims and Suits (If the answer to any of the questions below is yes, please attach details.)
 - 3.2.1 Has your organization ever failed to complete any Work awarded to it?
 - 3.2.2 Has your organization ever been debarred from bidding on any public work of improvement by any state, county or local government agencies? If so, please explain.
 - 3.2.3 Has your organization ever been assessed liquidated damages on any public work of improvement? If so, please explain.
 - 3.2.4 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?
 - 3.2.5 Has your organization filed any lawsuits or requested arbitration with regard to construction within the last five (5) years?
 - 3.2.6 Have you or, if Bidder is a corporation, any principal of the corporation ever been convicted of a felony? If your answer is "Yes", please explain the details of that conviction and, if so, whether you or said officer have served his or her sentence.
 - 3.2.7 Have you or your company ever been charged by any governmental agency for failure to follow safety procedures? If so, please explain.

- 3.2.8 Has any governmental agency ever submitted a complaint against you to the California State Labor Commission for failure to submit certified payrolls? If your answer is "Yes", please provide the details of such complaint.
- 3.3 Within the last five years, has any officer or principal of your organization ever been an officer of another organization when it failed to complete a construction Contract? (If the answer is yes, please attach details.)
- 3.4 On a separate sheet, list major construction projects your organization has in progress, giving the name of the project, owner, architect/engineer Contract amount, percent complete and scheduled completion.
- 3.4.1 State total worth of Work in progress and under Contract:
- 3.5 On a separate sheet, list all projects your organization has completed in the past five years, giving the name of project, owner, owner's phone number, project manager, Contract amount, date of completion and percentage of the cost of the Work performed with your own forces.
- 3.5.1 State average annual amount of construction Work performed during the past five years:
- 3.6 On a separate sheet, list the construction experience and present commitments of the key individuals of your organization.
4. SURETY
- 4.1 If a performance and/or payment bond is required by this bid, identify the bonding company if arrangements for the bond have been made; if not, identify the bonding company for the Contractor's most recent project:
- 4.2 Name and address of agent:

FOR FEDERALLY FUNDED PROJECTS

QUESTIONNAIRE REGARDING BIDDERS

Number of years and months engaged in the contracting business under present business name.

List of last three Contracts performed which show experience in Work of a nature similar to that covered in this proposal. If none, so indicate.

<u>Year</u>	<u>Type of Work</u>	<u>Contract Amount</u>	<u>Location</u>	<u>For Whom Performed</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Because this project is Federally funded, it is necessary to obtain information concerning minority group participation for statistical purposes so that the Department of Housing and Urban Development may determine the degree to which its programs are being utilized by minority Contractors.

A minority enterprise is defined by the Federal Government as a business that is 50% or more minority-owned.

Please check applicable box concerning the ownership of your business:

- | | |
|---|--|
| (1) <input type="checkbox"/> American Indian or Alaska Native | (2) <input type="checkbox"/> Asian or Pacific Islander |
| (3) <input type="checkbox"/> Black | (4) <input type="checkbox"/> Hispanic |
| (5) <input type="checkbox"/> White | (6) <input type="checkbox"/> Female |
| (7) <input type="checkbox"/> Other (Specify) | |

State of California Contractor's License No. _____

Contractor's License expiration date _____
Return With Bid Proposal

FOR FEDERALLY FUNDED PROJECTS

QUESTIONNAIRE REGARDING SUBCONTRACTORS

Bidder shall answer the following questions and submit with his/her Contract proposal.

1. Were bid depository or registry services used in obtaining subcontractors bid figures in order to compute your bid? Yes ☐ No ☐
 2. If the answer to No. 1 is "Yes", please forward a copy of the rules of each bid depository you used with this questionnaire.
 3. Did you have any source of subcontractors' bids other than bid depositories?
 4. Has any person or group threatened you with subcontractor boycotts, union boycotts, or other sanctions to attempt to convince you to use the services or abide by the rules of one or more bid depositories? Yes ☐ No ☐
 5. If the answer to No. 4 is "Yes", please explain the following details:
 - (a) Date:
 - (b) Name of person or group:
 - (c) Job involved (if applicable):
 - (d) Nature of the threats:
 - (e) Additional comments:
(Use additional paper if necessary)
 6. Was a conscious effort made to recruit or provide equal opportunity for bids by minority or project area subcontractors? Yes ☐ No ☐
 7. Was a conscious effort made to recruit and hire project area lower-income residents? Yes ☐ No ☐
- Please submit Statement.

8. We declare under penalty of perjury that the foregoing is true and correct.

Dated this _____ day of _____, 20____.

Name of Company

By: _____

Title _____

All of the above statements as to experience, financial qualifications, and available plant and equipment are submitted in conjunction with the proposal, as a part thereof, and the truthfulness and accuracy of the information is guaranteed by the bidder.

Signature of Bidder _____

Return With Bid Proposal

CONTRACTOR SAFETY QUESTIONNAIRE

Company Name: _____

Primary Type of Work: _____

Person Completing Form: _____

Title: _____ Phone Number: _____

Signature: _____ Date: _____

SAFETY PERFORMANCE

1. List your company's Interstate Experience Rating Modifier (ERM) for the three most recent years.

20_____
20_____
20_____

2. List your company's number of injuries/illnesses from your OSHA 300 logs for the three most recent years.

	20____	20____	20____
a. Fatalities	_____	_____	_____
b. OSHA recordable incidents	_____	_____	_____
c. Lost work day incidents	_____	_____	_____
d. Total lost work days	_____	_____	_____
e. Total hours worked	_____	_____	_____

3. Please provide copies of the following: Check if Enclosed

- | | | | |
|--|--------------------------|---|--------------------------|
| a). OSHA 300 logs for the most recent three years and current year-to-date | <input type="checkbox"/> | e). Training Plans - * | <input type="checkbox"/> |
| b). Verification of ERM from your insurance carrier | <input type="checkbox"/> | f). Training Certificates for Employees - * | <input type="checkbox"/> |
| c). Injury/Illness Report | <input type="checkbox"/> | g). Emergency Response Training - * | <input type="checkbox"/> |
| d). Complete written Safety Program - * | <input type="checkbox"/> | | |

Primary contractors must submit all information requested on No. 3. (a-g) to the City. Subcontractors must submit information (a-c) to the City and d-g to the primary contractor and should be made available to the City upon request.

4. Company Safety Contact:

a. Name _____

b. Phone _____

SAFETY PROGRAM

1. SAFETY PROGRAM DOCUMENTATION

Circle One

a. Do you have a written safety program manual?

Yes No

1) Last revision date _____

- b. Do you have a written safety field manual? Yes No
- c. Are all workers given a booklet that contains work rules? responsibilities and other appropriate information? Yes No

2. POLICY AND MANAGEMENT SUPPORT

- a. Do you have a safety policy statement from an officer of the company? Yes No
- b. Do you have a disciplinary process for enforcement of your safety program? Yes No
- c. Does management set corporate safety goals? Yes No
- d. Does executive management review:
- ☐ Accident reports? ☐ Safety statistics?
- ☐ Inspection reports?
- e. Do you safety pre-qualify subcontractors? Yes No
- f. Do you have a written policy on accident reporting and investigation? Yes No
- g. Do you have a light-duty, return-to-work policy? Yes No
- h. Is safety part of your supervisor's performance evaluation? Yes No
- i. Do you have a personal protective equipment (PPE) policy? Yes No
- j. Do you have a written substance abuse program? Yes No
- If yes, does it include:
- ☐ Pre-employment testing ☐ Return-to-duty testing
- ☐ Random testing ☐ Disciplinary process
- ☐ Reasonable cause testing ☐ Alcohol testing
- ☐ Post accident testing ☐ National Institute on Drug Abuse
- ☐ Panel Screen
- k. Does each level of management have assigned safety duties and responsibilities? Yes No

2. TRAINING AND ORIENTATION

- a. Do you conduct safety orientation training for each employee? Yes No
- b. Do you conduct site safety orientation for every person new to the job site? Yes No
- c. Does your safety program require safety training meetings? Yes No
- for each supervisor (foreman and above)? How often?
- ☐ Weekly ☐ Monthly ☐ Quarterly ☐ Annually

d. Do you hold tool box/tailgate safety meetings
focused on your specific work operations/exposures? Yes No
☐ Weekly ☐ Daily

e. Do you require equipment operation/certification training? Yes No

3. ADMINISTRATION AND PROCEDURES

a. Does your written safety program address
administrative procedures? Yes No

If yes, check which apply:

- | | |
|---|--|
| <input type="checkbox"/> Pre project/task planning | <input type="checkbox"/> Emergency procedures |
| <input type="checkbox"/> Record keeping | <input type="checkbox"/> Audits/inspections |
| <input type="checkbox"/> Safety committees | <input type="checkbox"/> Accident investigations/reporting |
| <input type="checkbox"/> HAZCOM | <input type="checkbox"/> Training documentation |
| <input type="checkbox"/> Substance abuse prevention | <input type="checkbox"/> Hazardous work permits |
| <input type="checkbox"/> Return-to-work | <input type="checkbox"/> Subcontractor prequalification |

b. Do you have project safety committees? Yes No

c. Do you conduct job site safety inspections? How often? Yes No
☐ Daily ☐ Weekly ☐ Monthly

Do these inspections includes a routine safety
inspection of equipment (e.g., scaffold, ladders, fire
extinguishers, etc.)? Yes No

d. Do you investigate accidents? How are they reported? Yes No
☐ Total company ☐ By superintendent
☐ By project ☐ By project manager
☐ By foreman ☐ In accordance with OSHA

e. Do you discuss safety at all preconstruction and progress?
meetings? Yes No

f. Do you perform rigging and lifting checks prior to lifting? Yes No
☐ For personnel ☐ For equipment ☐ Heavy lifts (more than 10,000 lbs.)

4. WORK RULES

a. Do you periodically update work rules? Yes No
When was the last update? _____

- b. What work practices are addressed by your work rules?
- | | |
|--|--|
| <input type="checkbox"/> CPR/first aid | <input type="checkbox"/> Access—entrances/stairs |
| <input type="checkbox"/> Barricades, signs,
and signals | <input type="checkbox"/> Respiratory protection |
| <input type="checkbox"/> Blasting | <input type="checkbox"/> Material handling/storage |
| <input type="checkbox"/> Communications | <input type="checkbox"/> Temporary heat |
| <input type="checkbox"/> Compressed air and gases | <input type="checkbox"/> Vehicle safety |
| <input type="checkbox"/> Concrete work | <input type="checkbox"/> Traffic control |
| <input type="checkbox"/> Confined-space entry | <input type="checkbox"/> Site visitor escorting |
| <input type="checkbox"/> Cranes/rigging and hoisting | <input type="checkbox"/> Public protection |

- | | |
|---|--|
| <input type="checkbox"/> Electrical grounding | <input type="checkbox"/> Equipment guards and grounding |
| <input type="checkbox"/> Environmental controls and Occupational health | <input type="checkbox"/> Monitoring equipment |
| <input type="checkbox"/> Emergency procedures | <input type="checkbox"/> Flammable material handling/storage |
| <input type="checkbox"/> Fire protection and prevention | <input type="checkbox"/> Site sanitation |
| <input type="checkbox"/> Floor and wall openings | <input type="checkbox"/> Trenching and excavating |
| <input type="checkbox"/> Fall protection | <input type="checkbox"/> Lockout/Tagout |
| <input type="checkbox"/> Housekeeping | <input type="checkbox"/> Energized/pressurized equipment |
| <input type="checkbox"/> Ladders and scaffolds | |
| <input type="checkbox"/> Mechanical equipment/ maintenance/pre-op checks/ operation | <input type="checkbox"/> Personal protective equipment |
| <input type="checkbox"/> Welding and cutting (hot work) | <input type="checkbox"/> Tools, power and hand |
| | <input type="checkbox"/> Electrical power lines |
| | <input type="checkbox"/> Other _____ |

5. OSHA INSPECTIONS

- | | | |
|---|-----|----|
| 1. Have you been inspected by OSHA in the last three years? | Yes | No |
| 2. Were these inspections in response to complaints? | Yes | No |
| 3. Have you been cited as a result of these inspections? | Yes | No |

If yes, describe the citations:

DESIGNATION OF SUBCONTRACTORS

NAME OF BIDDER _____

Each bidder shall set forth below:

1. The name and location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work of improvement, or a subcontractor licensed in the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work of improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent of the Contractor's total bid.
2. The portion and estimated dollar amount of the work which will be done by each subcontractor. The Contractor shall list only one subcontractor for each portion as is defined by the Contractor in his/her bid.
3. If the Contractor fails to specify a subcontractor, or if the Contractor specifies more than one subcontractor for the same portion for work to be performed under the Contract in excess of one-half of one percent of the Contractor's total bid, then he/she agrees that he/she is fully qualified to perform that portion himself/herself, and that he/she shall perform that portion himself/herself. If after award of Contract, the Contractor subcontracts any such portion of the Work, the Contractor shall be subject to the statutory penalties.

Please type or legibly print (attach additional sheets as necessary).

Name of Subcontractor	License Number	City	Trade	Estimated \$ Amount

DESIGNATION OF SUBCONTRACTORS

The Contractor shall not:

- A. Substitute any person as subcontractor in place of the subcontractor listed in the original bid, except that the City may consent to the substitution of another person as subcontractor:
 - 1. When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written Contract, based upon the general terms, conditions, plans and specifications for the project involved or the terms of such Contractor's written bid, is presented to him by the Contractor, or
 - 2. When the listed subcontractor becomes bankrupt or insolvent, or
 - 3. When the listed subcontractor fails or refuses to perform his/her subcontract, or
 - 4. When the listed subcontractor fails or refuses to meet the bond requirements of the Contractor, or
 - 5. When the Contractor demonstrates to the City that the name of the subcontractor was listed as the result of an inadvertent clerical error, or
 - 6. When the listed subcontractor is not licensed pursuant to the Contractors License Law, or
 - 7. When the City determines that the Work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the Plans and Specifications, or that the subcontractor is substantially delaying or disrupting the progress of the Work.
- B. Permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the City.
- C. Other than in the performance of "change orders" causing changes or deviations from the original Contract, sublet or subcontract any portion of the Work in excess of one-half of one percent of the Contractor's total bid as to which his/her original bid did not designate a subcontractor.

Prior to approval of a Contractor's request for a subcontractor substitution, the City will give notice in writing to the listed subcontractor of the Contractor's request to substitute and of the reason for the request. The notice will be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified shall have five (5) Working Days within which to transmit to the City written objections to the substitution. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution.

If written objections are filed, the City will give notice in writing of at least five (5) Working Days to the listed subcontractor of a hearing by the City on the Contractor's request for substitution.

The Contractor, as a condition to asserting a claim of inadvertent clerical error in the listing of a subcontractor, shall within two Working Days after the time of the bid opening by the City, give written notice to the City and copies of such notice to both the subcontractor he/she claims to have listed in error and the intended subcontractor who had bid to the Contractor prior to the bid opening.

Subletting or subcontracting of any portion of the Work in excess of one-half of one percent of the Contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the City setting forth the facts constituting the emergency or necessity.

If the Contractor violates any of the above provisions the Contractor may be in breach of this Contract and the City may exercise the option, in its own discretion, of (1) canceling this Contract, or (2) assessing the Contractor a penalty in an amount not more than ten percent of the amount of the subcontract involved, and this penalty shall be deposited in the fund out of which the prime Contract is awarded.

[END OF DOCUMENT]

SAMPLE

CONTRACTOR'S AFFIDAVIT OF NONCOLLUSION

STATE OF CALIFORNIA)
)
COUNTY OF _____)

_____ being first duly sworn, deposes and says:

1. That he/she is the _____ (Title of office if a corporation: "sole owner," "Partner," or other proper title) of _____, (hereinafter called "Contractor") who has submitted to the City of Glendale a Bid Proposal for the construction of (Insert Project Name);
2. That said Bid Proposal is genuine; that the same is not sham; that all statements of fact therein are true;
3. That said Proposal is not made in the interest or behalf of any person, partnership, company, association, organization, or corporation not named or disclosed;
4. That Contractor did not, directly or indirectly induce, solicit, agree, collude, conspire or contrive with anyone else to submit a false or sham bid, to refrain from bidding, or withdraw his/her bid, to raise or fix the bid price of Contractor or of anyone else, or to raise or fix any overhead profit, or cost element of Contractor's price or the price of anyone else; and did not attempt to induce action prejudicial to the interests of the City of Glendale, or of any other bidder, or anyone else interested in the proposed Contract;
5. That the Contractor has not in any manner sought by collusion to secure for himself an advantage over any other bidders or induce action prejudicial to the interests of the City of Glendale or of any other bidder, or anyone else interested in the proposed Contract;
6. That the Contractor has not accepted any bid from any subcontractor or material supplier through any bid depository, the bylaws, rules or regulations of which prohibit or prevent the Contractor from considering any bid from any subcontractor or material supplier, which is not processed through said bid depository, or which prevent any subcontractor or material supplier from bidding to any Contractor who does not use the facilities of or accept bids from or through such bid depository;

[CONTINUED ON NEXT PAGE]

8. That the Contractor did not, directly or indirectly, submit the Contractor's bid price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any individual or group of individuals, except to the City of Glendale, or to any person or persons who have partnership or other financial interest with said Contractor in his/her business.

Dated this _____ day of _____ at _____ , _____
Month/Year City State

Contractor

Title

Subscribed and sworn to before me this _____ Day
of _____ , 20 _____

Notary Public in and for said County and State

(SEAL)

[END OF DOCUMENT]

PRE-BID SITE INSPECTION CERTIFICATION

The bidder hereby certifies that he/she and his/her subcontractors have inspected the site and related specifications of work and fully acquainted themselves with all conditions and matters which might in any way affect the work, time of completion or the cost thereof, including, but not limited to scheduling and disclosed outside Contracts involving this work.

The bidder also certifies he/she has observed the designated Contractor work areas and access routes, if disclosed or shown, as part of work in this Contract.

NAME OF BIDDER:

Date: _____

Persons who inspected site of the proposed Work for your firm:

Name _____

Date of Inspection _____

Title _____

Name _____

Date of Inspection _____

Title _____

**CONSTRUCTION CONTRACT BETWEEN
CITY AND CONTRACTOR**

This Agreement is made and entered into at Glendale, California this ____ day of _____, 20 ____, by and between the CITY OF GLENDALE, a chartered municipal corporation (hereinafter "City") and _____, a [Insert State of Incorporation] corporation (hereinafter "Contractor"), for construction of [Insert Project Name].

THE PARTIES HERETO AGREE AS FOLLOWS:

1. CONTRACT DOCUMENTS

The "Contract Documents" except for modifications issued after execution of this Agreement, shall consist of the following documents which are either attached hereto as exhibits or are incorporated into this Agreement by this reference, with the same force and effect as if set forth at length herein:

- A. This Agreement, including all Exhibits and attachments;
- B. Project Plans and Technical Specifications, including General Conditions and any Special Conditions;
- C. Notice Inviting Bids;
- D. Instructions to Bidders;
- E. Bidder's Proposal;
- F. Bidding Form; and
- G. Bidding Addenda Nos. _____
- H. Federal Forms _____

2. [OPTIONAL: REFERENCE DOCUMENTS]

The following Reference Documents are not considered Contract Documents and were provided to the Contractor for informational purposes. Contractor may rely upon the technical data contained in such documents but not upon non-technical data, interpretations, opinions or provisional statements contained therein:

- A. Geotechnical Reports dated _____;
- B. Sewer Utility Plans
- C. [List additional documents]

[CONTINUED ON NEXT PAGE]

3. SCOPE OF WORK

Within the Contract Time and for the stated Contract Price, subject to adjustments thereto, and pursuant to the Contract Documents, the Contractor shall perform and provide all necessary labor, services, supervision, materials, tools, equipment, apparatus, facilities, supplies, tools, permits, supervision, utilities and transportation necessary to complete the Work in strict conformity with the Contract Documents for:

Specifications No. [Insert Project Name]

4. TIME FOR PERFORMANCE

Contract Time. Contractor shall achieve Substantial Completion of the Work within _____ calendars Days from the date of Notice to Proceed ("Contract Time"). Contractor shall achieve Final Completion of the Work within Thirty (30) Calendar Days after the Work is Substantially Completed. The Contract Time may only be adjusted as permitted by this Construction Contract and the General Conditions.

Time is of the essence of this Agreement. If Contractor fails to achieve Substantial Completion of the entire Work within the Contract Time for Substantial Completion, Contractor shall pay City as liquidated damages the amount of _____ dollars/no cents (\$_____) per day for each calendar day occurring after the expiration of the Contract Time for Substantial Completion until Contractor achieves Substantial Completion of the entire Work, as required by Article 3 of the General Conditions of Contract.

5. CONTRACT SUM

In consideration of the Contractor's full, complete, timely, and faithful performance of the Work required by the Contract Documents, City shall pay Contractor the sum of _____ dollars/no cents (\$_____), payable as set forth in the General Conditions ("Contract Sum").

6. CERTIFICATION BY CONTRACTOR

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Contractor Initial here: _____.

[CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Contract to be executed the date and year first
above written.

[Contractor]

By: _____
An Authorized Signatory

Date: _____

CITY OF GLENDALE

By: _____
JAMES E. STARBIRD, City Manager

Date: _____

APPROVED AS TO FORM:

CITY ATTORNEY

Date: _____

[END OF DOCUMENT]

ARTICLE 1 PRELIMINARY PROVISIONS

1.01 DEFINITIONS

The following words shall have the following meanings:

- A. **As-Builts.** The documents prepared by Contractor showing the condition of the Work as actually built, including, without limitation, all changes and the exact locations of all mechanical, electrical, plumbing, HVAC or other portions of the Work that are shown diagrammatically in the Contract Documents.
- B. **Bid.** Contractor's written bid proposal submitted to City for the Work in response to the Notice Inviting Bids.
- C. **Bidder.** The individual, partnership, firm, corporation, joint venture or other legal entity submitting a bid on these Contract Documents or any part thereof.
- D. **Change Order.** A Change Order is a written document prepared by the City reflecting the agreement between the City and Contractor for: a change in the terms or conditions of the Contract, if any; a specific Scope Change in the Work; the amount of the adjustment, if any, in the Contract Sum; and the extent of the adjustment, if any, in the Contract Time.
- E. **Change Order Request (COR).** A Change Order Request is a written document originated by the Contractor, which describes an instruction issued by the City after the effective date of the Contract, which Contractor believes to be a scope change that may result in changes to the Contract Sum or Contract Time or, which describes the need for or desirability of a change in the Work proposed by Contractor.
- F. **City or Owner.** The City of Glendale, California, acting through its City Council or other City officials authorized to act for the City, acting in its proprietary rather than regulatory capacity in connection with the Project.
- G. **Contract Documents.** The Contract Documents consist of the documents enumerated as such in the Agreement between City and Contractor, all Addenda issued prior to and all Modifications issued after the effective date of the Agreement.
- H. **Contract Sum.** The total amount of compensation stated in the Construction Contract that is payable to Contractor for the complete performance of the Work in accordance with the Contract Documents.
- I. **Contract Time.** The total number of days set forth in the Construction Contract within which Substantial Completion of the Work must be achieved, beginning with the date established in the Notice to Proceed to commence the Work and the ending with the date that the Notice of Substantial Completion is issued by the Construction Manager, including approved extensions of time permitted under the terms of the Contract Documents. The Contract Time for Contractor's performance of the Work is measured in calendar days (not work days).
- J. **Contractor.** The individual, partnership, firm, corporation, joint venture or other legal entity with whom the Contract is made by said City, or the agent or legal representative who may be appointed to

represent such individual, partnership, firm, corporation, joint venture or other legal entity in the execution of the Contract as general contractor for construction of the work.

- K. **Date of Commencement.** The date for commencement of the Work fixed by City in a Notice to Proceed to Contractor.
- L. **Day.** The terms "day" or "days" mean calendar days unless otherwise specifically designated in the Contract Documents. The term "Work Day" or "Working Day" shall mean any calendar day except Saturdays, Sundays and City-recognized legal holidays.
- M. **Director.** The [~~Select one:~~ Director of Public Works, Director of Glendale Water and Power, Director of Parks, Recreation and Community Services] of the City of Glendale or his/her duly appointed representative.
- O. **Extra Work.** Work required to be performed by Contractor that is not described in, or reasonably inferable from, the Contract Documents, the performance of which requires the expenditure by Contractor of additional and unforeseen costs.
- P. **Field Directive.** A Field Directive is a unilateral written order prepared and signed by the City directing the Contractor to perform a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.
- Q. **Final Completion.** The term Final Completion is the date, evidenced by the City's approval of Contractor's Final Application for Payment, when the Work has been completed and the requirements for Project closeout set forth in the Contract are accepted by City.
- R. **Force Majeure.** "Force Majeure" includes but is not limited to declared or undeclared war, sabotage, insurrection, riot, or other acts of civil disobedience, labor disputes, fires, explosions, floods, earthquakes or other acts of God.
- S. **Fragnet.** A contemporaneous, fragmentary schedule network, which graphically identifies the sequencing of all critical and non-critical new activities and/or activity revisions affected by a compensable delay or excusable delay with logic ties to all affected existing activities noted on the construction schedule.
- T. **Notice to Proceed.** The Notice to Proceed is a document issued by the City fixing the date for commencement for the Work.
- U. **Parties.** The City and Contractor may be referred to in the Contract Documents from time to time as the Parties.
- V. **Project.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the City or by separate contractors.
- W. **Site.** The physical area designated in the Contract Documents for Contractor's performance of the Work.
- X. **Substantial Completion.** Substantial Completion is defined to mean the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents as determined by the City so that the City can occupy and utilize the Work for its intended use (for which

a Temporary Certificate of Occupancy ("TCO") has been issued by the City unless a TCO is not required to operate that type of facility) and as further defined in the Contract Documents.

- Y. **Unilateral Change Order.** A Unilateral Change Order is an unilateral written order prepared and signed by the City, directing Contractor to perform a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.
- Z. **Work.** The term "Work" means the construction and other services required by, and reasonably inferable from the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.02 REPRESENTATIVES

- A. The Director shall be the representative of the City and, except as otherwise expressly provided herein, shall make all decisions and interpretations to be made by the City under the provisions of the Contract Documents.
- B. The Contractor shall at all times be represented on the Work in person or by a duly designated agent. Instructions and information given by the Director to the Contractor's agent on the Work shall be considered as having been given to the Contractor.

1.03 PERMITS, LICENSES AND UTILITIES

- A. The Contractor shall apply for and obtain all permits required by other Federal, State and County agencies as well as the City of Glendale. All permits and licenses shall be obtained by and at the expense of the Contractor and/or subcontractors, permit fees payable to the City of Glendale shall be waived. The Contractor shall enforce the permit requirements.
- B. Where requirements of the permits differ from those of the Drawings and Specifications, the more stringent requirements shall apply.
- C. Unless otherwise specified in this Contract, Contractor shall be responsible for payments of all utilities including but not limited to gas, electricity, sewer, water, refuse hauling and telephone.

1.04 WAIVER

A waiver by City of any breach of any term, covenant, or condition contained in the Contract Documents shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained therein, whether of the same or a different character.

1.05 DATA TO BE FURNISHED BY THE CONTRACTOR

The Contractor shall furnish the Director reasonable facilities for obtaining such information as he/she may desire respecting the character of the materials and the progress and manner of the Work, including all information necessary to determine its costs, such as the number of persons employed, their pay, the time during which they worked on the various classes of construction, and other pertinent data.

1.06 CONTRACT DRAWINGS

The City will accept no responsibility for errors resulting from misinterpretation or scaling of the Drawings.

1.07 SPECIFICATIONS AND DRAWINGS

A. The Contractor shall keep on the Work Site a copy of all Specifications, Drawings, and change orders pertaining to the Work and shall at all times give the Director access thereto. Anything mentioned in the Specifications and not shown on the Drawings or shown on the Drawings and not mentioned in the Specifications shall be of like effect as though shown or mentioned in both.

B. In general, the Drawings will show dimensions, positions, and kind of construction; and the Specifications will define materials, quality, and standards. Any Work not particularly detailed, marked or specified, shall be the same as similar parts that are detailed, marked or specified.

C. The Drawings shall not be scaled to determine dimensions, and in all cases shall be calculated from figures shown on the Drawings. Any discrepancies between scale and figured dimensions, not marked "not to scale," must be brought to the Director's attention before proceeding with the Work affected by the discrepancy.

D. Omissions from the Drawings and/or Specifications shall not relieve the Contractor from the responsibility of furnishing, making, or installing all items required by law or code, or usually furnished, made or installed in a project of the scope and general character indicated by the Drawings and Specifications.

E. For convenience, the Drawings and Specifications are arranged in various trade subparagraphs, but such segregation shall not be considered as limiting the Work of any subcontract or trade. The Contractor shall be solely responsible for all subcontract arrangements of the Work regardless of the location or provision in the Drawings and Specifications.

F. The City will furnish free of charge to the Contractor, a maximum of six (6) sets of contract drawings and specifications. The Contractor shall pay for the costs of any additional sets or portions thereof. The Contractor shall be responsible to see that all sets are the same as the up to date approved set.

1.08 PRECEDENCE OF CONTRACT DOCUMENTS.

A. In the event of conflict between any of the Contract Documents, the provisions placing a more stringent requirement on the Contractor shall prevail. The Contractor shall provide the better quality or greater quantity of Work and/or materials unless otherwise directed by City in writing. In the event none of the Contract Documents place a more stringent requirement or greater burden on the Contractor, the controlling provision shall be that which is found in the document with higher precedence in accordance with the following order of precedence:

1. Permits issued by regulatory agencies required for the Work.
2. Modifications issued after execution of the Contract (including modifications to Plans and Specifications)
3. The Contract, including all exhibits, attachments, appendices and Addenda, with later Addenda having precedence over earlier Addenda.
4. Supplementary Provisions, if any.
5. Specifications
6. Plans

7. Notice Inviting Bids, Instructions to Bidders and Bidder's Proposal

B. With reference to the Plans, the order of precedence is as follows:

1. Change Order plans govern over Addenda and Contract plans
2. Addenda plans govern over Contract plans
3. Project Plans govern over Standard Plans
4. Detail plans govern over general plans
5. Figures govern over scaled dimensions

C. Within the Specifications, the order of precedence is as follows:

1. Change Orders
2. Special Provisions
3. Project Technical Specifications
4. Standard Specifications, if any
5. Applicable Trade Association Specifications

1.09 NOTICE OF CONFLICTS

If the Contractor, in the course of the Work, becomes aware of any claimed conflicts, errors or omissions in the Contract Documents or in the City's fieldwork or work of City's separate contractors, the Contractor shall immediately notify the Director in writing. The Director shall promptly review the matter, and if the Director finds a conflict, error or omission, the Director shall determine the corrective actions and advise the Contractor accordingly. If the correction associated with a conflict, error or omission increases or decreases the amount of Work called for in the Contract, the City shall issue an appropriate Change Order in accordance with the Contract Documents. After discovery of an error or omission by the Contractor, any related additional work performed by the Contractor shall be done at the Contractor's risk unless authorized by the Director.

1.10 DAILY REPORTS

Contractor shall maintain a daily report for each day containing a record of weather, Contractor's own forces working on site, Subcontractors working on the site, the number of workers for each Subcontractor on site, materials delivered, Work accomplished, problems encountered and other similar relevant data as the City may reasonably require. The daily report shall be signed by Contractor's Superintendent, submitted within 24 hours (next Working Day) to the Director, and shall be made available to others as directed by City.

1.11 LINES, GRADES, AND MEASUREMENTS

- A. All lines and grades will be established by the Contractor. The Contractors shall carefully preserve all survey stakes and reference points as far as possible. Should any stakes or points be removed or destroyed unnecessarily by any act of the Contractor or his/her employees, they must be reset to the satisfaction of the Director, at the Contractor's expense.

- B. The Contractor shall inform the Director 48 hours (two work days) in advance of the times and places at which he/she intends to Work in order that inspection may be provided, and that necessary measurements for records and payments may be made with minimum inconvenience.
- C. No direct payment will be made for the cost to the Contractor of any of the Work or delay occasioned by giving lines and grades, by making other necessary measurements, or by inspection.

1.12 RIGHT OF WAY

- A. The site for the installation of equipment or the right of way for the Work to be constructed under this Contract will be provided by the City.
- B. The City will provide the appropriate rights of way and property for pipelines and structures. Upon approval by the Director, the Contractor may, without cost, use portions of any of the City's rights of way or property which may be suitable for working space and for storage of equipment and materials. The Contractor will be held responsible for any damage to structures, streets, and roads, trees and landscaping, and for any damage that may result from his/her use of City property.
- C. In case areas additional to those available on the City's rights of way or property are required by the Contractor for his/her operations, he/she shall make arrangements with the property owners for the use of such additional areas at his/her own expense.

1.13 CONTRACTOR'S OPERATIONS/STORAGE YARD

In the event the Contractor requires space for the storage and/or staging of construction materials, supplies, equipment, stockpiling of debris, or any other needs required for construction operations, he/she shall acquire at his/her own expense such areas as he/she may desire. For properties within the City of Glendale, the staging area must be enclosed at Contractor's expense with construction fencing covered with a mesh screen to limit visibility to the site. Approval of the Neighborhood Services Department is required to ensure that private properties with code enforcement problems are not used. Private property used for storage of construction material or debris shall be restored to a legal condition with regard to appearance and maintenance upon conclusion of the project. Property should be graded and free of weeds and debris when project is completed.

[END OF ARTICLE]

ARTICLE 2 PERFORMANCE OF THE WORK

2.01 PERFORMANCE OF WORK - GENERAL

Contractor shall, at its own cost and expense, furnish all necessary materials, labor, transportation, and equipment for doing and performing said Work and the materials used shall comply with the requirements of the Contract Documents. All Work shall be performed and completed as required in the Contract Documents, and subject to the approval of the Director, or his/her designated assistant.

2.02 NO ASSIGNMENT OR DELEGATION

Contractor shall not assign or delegate the duties or obligation under this Contract or his/her interest therein in whole or in part without the prior written consent of the City which may be withheld at the City's sole discretion.

2.03 STANDARD OF PERFORMANCE

Contractor agrees that all services performed hereunder shall be provided in a manner commensurate with the highest professional standards and shall be performed by qualified and experienced personnel; that any Work performed by Contractor under the Contract will be performed in the best manner; that any material furnished shall be subject to the approval of the Director; and that both Work and materials will meet fully the requirements of the Contract Documents.

2.04 DEFECTIVE WORK

The Contractor shall remove and rebuild at his/her own expense any part of the Work that has been improperly executed, even though it has been included in the monthly estimates. If he/she refuses or neglects to replace such defective Work, prior to acceptance of the Work, it may be replaced by the City at the expense of the Contractor, plus 15% for overhead expenses, and his/her sureties shall be liable therefor. (See Section 2.14 for curing defects after acceptance of the Work.)

2.05 COMMUNICATIONS REGARDING THE WORK

NOTICES AND COMMUNICATIONS

A. Notices under the Contract Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

All correspondence with Contractor shall be sent to the following address:

Attention: _____
Phone: _____

Facsimile: _____

All communications shall be copied to City and shall be delivered to City's Director at the address set forth below, with copies to such additional persons as may be directed by City's Director.

City of Glendale

Attention: _____
Phone: _____
Facsimile: _____

- B. Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefax after 4:00 p.m. Pacific Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by Contractor's Project Manager and technical representatives designated by City. Contractor's representatives shall be available at all reasonable times for consultation, and shall be authorized to act on behalf of Contractor in matters concerning the Work.
- C. Contractor shall copy City on all written correspondence pertaining to the Contract between Contractor and any Person other than Contractor's Subcontractors, consultants and attorneys.

2.06 INDEPENDENT CONTRACTOR

The Contractor in the performance of the Work hereunder will be acting in an independent capacity and not as an agent, employee, partner, or joint venture of the City.

2.07 EMERGENCY WORK

A. During Working Hours:

In case of an emergency which threatens loss or injury of property, and/or safety of life during working hours, the Contractor shall act, without previous instructions from the City, as the situation may warrant. He/she shall notify the Director of the emergency and the action taken immediately thereafter. Any compensation claimed by the Contractor, together with substantiating documents in regard to expense, shall be submitted to the Director within 15 calendar days after the emergency. Compensation, if allowed, will be paid for as Extra Work.

B. Outside of Working Hours:

Whenever, in the opinion of the City, there shall arise outside of the regular Working hours on the Contract Work of an emergency nature which threatens loss or injury of property, or danger to public safety, the Contractor shall act, without previous instructions from the City as the situation may

warrant. He/she shall notify the Director of the emergency and the action taken immediately thereafter. Any compensation claimed by the Contractor, together with substantiating documents in regard to expense, shall be submitted to the Director within 15 calendar days after the emergency. Compensation, if allowed, will be paid for as Extra Work. In the event the Contractor is not able to respond to an emergency outside of regular working hours, the City's forces will handle such emergency Work. If such emergency arises out of or is the result of operations by the Contractor, the cost of the corrective measures will be billed to the Contractor and deducted from his/her payment as provided in the Contract Documents. The performance of emergency Work by City forces will not relieve the Contractor of any of his/her responsibilities, obligations, or liabilities under the Contract.

2.08 SUBCONTRACTORS

- A. Each subcontract shall contain a reference to the Contract between the City and the principal Contractor, and the terms of the Contract and all parts thereof shall be made part of each subcontract insofar as applicable to the Work covered thereby. Each subcontractor shall provide for its annulment at the order of the Director, if, in his/her opinion, the subcontractor fails to comply with the requirements of the principal Contract insofar as the same may be applicable to his/her Work.
- B. Nothing contained in these Contract Documents shall be construed as creating any contractual relationship between any subcontractor and the City.
- C. The Contractor shall be considered the employer of and as fully responsible to the City for the acts and omissions of subcontractors and of persons employed by them as he/she is for the acts and omissions of persons directly employed by him/her.
- D. The Contractor shall be responsible for the coordination of the trades, subcontractors, and material suppliers engaged upon his/her Work. It shall be his/her duty to see that all of his/her subcontractors commence their Work at the proper time and carry it on with due diligence so that they do not delay or injure either the Work or materials; and that all damage caused by them or their workers is made good at his/her expense.
- E. The City will not undertake to settle differences between the Contractor and his/her subcontractors or between subcontractors.
- F. The Contractor shall utilize the services of specialty subcontractors, without additional expense to the City, on those parts of the Work which are specified to be performed by specialty contractors.

2.09 USE OF FACILITIES PRIOR TO COMPLETION OF CONTRACT

- A. Whenever in the opinion of the Director any Work under the Contract, or any portion(s) thereof, is in a condition suitable for use by the City, the City may, after written notice and designation from the Director to the Contractor, use (which includes, but is not limited to, taking over or placing into service) any portion(s) designated by the Director.
- B. The use of any portion(s) by the City shall not be construed as, and will not constitute acceptance in any sense, of any portion(s) of the Work of the Contractor nor will such use trigger the running of any warranty and/or guarantee periods.
- C. All necessary repairs, renewals, changes, or modifications in the Work or any portion thereof so used, not due to ordinary wear and tear, but due to defective materials or workmanship, the operations of the Contractor, or any other cause, shall be made at the expense of the Contractor.

- D. The use of any portion(s) by the City shall not relieve the Contractor of any of his/her responsibilities or liabilities under the Contract nor constitute a waiver by the City of any of the conditions thereof. Said use shall not cancel liquidated damages as of the first date of use, or any continuance thereof, nor impair, reduce, or change the amount of liquidated damages.

2.10 COOPERATION WITH OTHER WORK FORCES

- A. The City reserves the right to perform other Work at or near the site at any time by the use of its own forces or other contractors.
- B. Other contractors, other utilities and public agencies or their contractors, other City contractors, and City personnel may be working in the vicinity during the project construction period. There may be some interference between these activities and the Work under the Contract Documents. The Contractor shall cooperate and coordinate his/her Work with that of other Work forces to assure timely Contract completion.

2.11 AGREEMENTS WITH PROPERTY OWNERS

Agreements with property owners for spoiling excavated material, storing materials, or other purpose related to the Work shall be made in writing and a copy submitted to the Director for his/her information. All storage charges shall be at the Contractor's sole expense.

2.12 PROTECTION OF PROPERTY

All public and private property, pavement or improvement, shall be safely guarded from damage or loss in connection with this Contract by the Contractor at all times. Should any facility, structure, or property be damaged during operations of the Contractor, he/she shall immediately notify the proper owners or authorities. All damages and losses incurred shall be paid by the Contractor.

2.13 CONTRACTOR'S RESPONSIBILITIES FOR LOSSES OR LIABILITIES

- A. Risk of Loss:

Except as otherwise provided in the Contract Documents and except as to the cost of repair or restoration of damage to the Work caused by force majeure, the Contractor shall bear all losses resulting to him/her on account of the amount or character of the Work, or from any unforeseen obstructions or difficulties which may be encountered, or from any encumbrances on the line of the Work, or because the nature of the ground in or on which the Work is done is different from what is assumed. The Contractor shall bear the risk for any City equipment, material, or supplies with which he/she has been entrusted.

- B. Materials and Facilities:

The Contractor shall be responsible for materials and facilities as hereinafter provided and in the event of his/her failure to carry out said responsibilities, the same may be carried out by the City at the expense of the Contractor:

1. The Contractor shall be responsible for any materials so furnished and for the care of all Work until its completion and final acceptance, and he/she shall at his/her own expense replace damaged or lost materials and repair damaged parts of the Work.

2. The Contractor shall protect City facilities from damage resulting from his/her Work. City facilities damaged by, or as a result of, the Contractor's Work under this Contract shall be repaired or replaced, as directed by the Director, at the Contractor's expense.
3. The Contractor shall remove from the vicinity of the completed Work all buildings, rubbish, unused material, concrete forms, and other materials belonging or used under his/her direction during construction. If Contractor fails to completely remove such items within a reasonable time the City may do so at the Contractor's expense.

C. Laws and Regulations:

1. The Contractor shall obey all laws, ordinances, and regulations in any manner affecting those engaged or employed on the Work, or the materials used in the Work, or in any way affecting the conduct of the Work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency should be discovered in this Contract, or in the Drawings or Specifications herein referred to, in relation to any such law, ordinance, regulation, order, or decree, he/she shall forthwith report the same in writing to the Director.
2. Contractor shall, at all times, cause all his/her agents and employees to observe and comply with all such applicable laws, ordinances, regulations, orders, and decrees in effect or which may become effective before Final Completion of this Contract.
3. Nothing in the Contract Documents shall be construed to permit Work not conforming to such laws, ordinances, and regulations. If the Contractor ascertains at any time that any requirement of this Contract is at variance with such applicable law requirement, he/she shall promptly notify the Director.
4. If such applicable law requirement was not in effect on the date of submission of bids, any necessary adjustment of the Contract price shall be made as provided in Article 6 (changes clause) of the General Conditions. If such applicable law requirement was in effect on said date of bid submission, no adjustment of Contract price will be considered.
5. The Contractor, at his/her own expense, shall pay all taxes properly assessed against his/her equipment, materials, or property used or required in connection with the Work.

2.14 GUARANTEE OF WORK

- A. The Contractor guarantees all materials and workmanship against defects for a period of one year, unless a longer period of time is noted otherwise, from the date of Final Acceptance of all Work performed under the Contract. The date of Final Acceptance will be established and confirmed in writing by the Director.
- B. The Contractor assumes responsibility for said one-year guarantee, unless noted otherwise, for all Work and materials provided or performed by subcontractors, manufacturers, or suppliers.
- C. Within a period of one year, unless noted otherwise, after Final Acceptance of the Work the Contractor hereby agrees that if any portion of the Work installed, constructed, or performed fails to fulfill any of the requirements of the Contract, he/she will, without delay and with the least practicable inconvenience and without further cost to the City, repair or replace defective or otherwise unsatisfactory Work or materials.

- D. Should the Contractor fail to act promptly in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before the Contractor can be notified or can respond to notification, the City may at its option make the necessary repairs or replacements, or perform the necessary Work, and the Contractor shall pay to the City the actual cost of such repairs plus 15 percent, or City may charge such costs to the Contractor's retention.
- E. The Contractor shall be responsible for the full expense incidental to making good any and all of the above guarantees and Contracts.

2.15 CLEANING AND ENVIRONMENTAL CONTROLS

The Contractor, subcontractors and employees shall comply with all litter and pollution laws and it shall be the responsibility of the Contractor to insure compliance. The Contractor shall do all of the following:

- A. Maintain the Site free of waste materials, debris, and rubbish. Maintain Site in a clean and orderly condition and Remove waste materials, debris and rubbish from site and dispose off-site legally.
- C. Contractor shall maintain at their disposal any and all equipment necessary to prevent and remediate any sanitary sewer overflow arising out of the Work. In addition, the Contractor shall furnish and operate a self-loading motor sweeper with spray nozzles as directed by the Director to maintain the affected areas in a condition of cleanliness acceptable to the City at all locations affected by the Contractor's operation. For purposes of this Section, the affected areas includes the Site as well as all haul routes to and from the project Site and all areas of construction and restoration which have not been completed. The Contractor shall not proceed with Work until affected areas are clean to the satisfaction of the Director.
- D. The Contractor shall take appropriate action to insure that no dust originates from the project site.
- E. Any equipment or vehicles driven and/or operated within or adjacent to a street gutter, storm drain, runoff conveyance or ocean shall be checked and maintained daily to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.
- F. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction, or associated activity or whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the State. When operations are completed, any excess materials or debris shall be removed from the Work area.

2.16 WATER POLLUTION CONTROL

- A. Water Quality Protection Requirements For Construction Projects With Less than 1-Acre Of Disturbed Soil

All construction projects, regardless of size, will be required to implement best management practices (BMPs) necessary to reduce pollutants to the Maximum Extent Practicable (MEP) to meet the minimum water quality protection requirements as defined in Table 2-1.

[PAGE CONTINUED]

Table 2-1 Minimum Water Quality Protection Requirements for Construction Projects		
Category	Minimum Requirements	BMPs
1. Sediment Control	Sediments generated on the project site shall be retained using adequate Treatment Control or Structural BMPs.	Sediment Control
2. Construction Materials Control	Construction-related materials, wastes, spills or residues shall be retained at the project site to avoid discharge to streets, drainage facilities, receiving waters, or adjacent properties by wind or runoff. Non-storm water runoff from equipment and vehicle washing and any other activity shall be contained at the project sites.	Site Management; Material and Waste Management
3. Erosion Control	Erosion from slopes and channels shall be controlled by implementing an effective combination of BMPs, such as the limiting of grading scheduled during the wet season; inspecting graded areas during rain events; planting and maintenance of vegetation on slopes; and covering erosion susceptible slopes.	Erosion Control

Please refer to the California Stormwater Quality Association's Construction Handbook available for free on their website (www.cabmphandbooks.com – Construction Handbook) for further information regarding the BMPs listed in Table 2-1.

B. Water Quality Protection Requirements For Construction Projects With 1-Acre (or greater) Of Disturbed Soil

In addition to the minimum BMPs required in Section A, a Storm Water Pollution Prevention Plan (SWPPP) must be submitted to the City for all construction projects where at least 1-Acre of soil will be disturbed. The SWPPP will include strategies for reducing runoff of pollutants and minimize environmental impacts to receiving waters. A SWPPP may also be required for projects smaller than 1-Acre if the City designates the project a threat to water quality objectives.

In addition, the Contractor must contact the Los Angeles Regional Water Quality Control Board (LARWQCB) if the project will disturb 1-Acre or more of soil. Construction activities can not begin until a Waste Discharger Identification (WDID) Number is issued by the State Water Board. The 1-Acre threshold includes the total amount of land disturbance. For example, if four streets, each 1/4-acre in size in different parts of the City are to be reconstructed then a WDID Number must be obtained. To request a Notice of Intent (NOI) you must contact the Regional Board at:

Los Angeles Regional Water Quality Control Board
320 W. 4th. Street, Suite 200
Los Angeles, California 90013
Phone: (213) 576-6600; Fax: (213) 576-6640
Internet Address: <http://www.swrcb.ca.gov/~rwqcb4>

The SWPPP shall include:

1. The name, location, period of construction, and a brief description of the project;

2. Contact information for the owner and contractor;
3. The building permit number for the project;
4. The grading permit number for the project (where applicable);
5. A list of major construction materials, wastes, and activities at the project site;
6. A list of best management practices to be used to control pollutant discharges from major construction materials, wastes, and activities;
7. A site plan (construction plans may be used) indicating the selection of BMPs and their location where appropriate;
8. Non-storm water discharges, their locations, and the BMPs necessary to prevent the discharge;
9. A maintenance and self-inspection schedule of the BMPs to determine the effectiveness and necessary repairs of the BMPs; and
10. A certification statement that all required and selected BMPs will be effectively implemented.

Within 7 days after the City awards the Contract, the Contractor shall submit seven (7) copies of the proposed SWPPP to the City. The City shall review the SWPPP within 14 days of receipt of the plan. If revisions are required, the Contractor shall revise and re-submit the document within 7 days of their receipt of the City's comments. The City shall then have 7 days to consider the revisions made by the Contractor and approve the SWPPP.

The Contractor shall maintain a minimum of two readily accessible copies of the SWPPP at the project site. The SWPPP shall be made available upon request of a representative of the Los Angeles Regional Water Quality Control Board (LARWQCB) or the U.S. Environmental Protection Agency (U.S. EPA). Requests by environmental groups and the public shall be directed to the City.

C. Best Management Practices

The objective of the SWPPP is to identify potential sources of pollution that may reasonably affect the quality of storm water discharge associated with construction activities. The plan will describe and ensure the implementation of Best Management Practices (BMPs) which will be used to reduce pollutants in the storm water discharges from the construction site. A Best Management Practice is defined as any program, technology, process, operating method, measure, or device that controls, prevents, removes, or reduces pollution. The Contractor shall select appropriate BMPs from the California Stormwater BMP Handbook, Municipal, Industrial, New Development, and Construction Volumes (www.cabmphandbooks.com) in conjunction with all activities and construction operations:

1. Construction Practices (NS2, NS3, NS4, and NS6)
2. Material and Waste Management (WM01, WM02, and WM04)
3. Vehicle and Equipment Management (NS8, NS9, and NS10)
4. Physical Stabilization (EC7, EC12, NS4, TC1, and TC2)

5. Sediment Control Practices (SE1, SE9, SE8, SE10, SE3, and SE2)

Copies of the California Stormwater BMP Handbooks may be obtained from:

California Stormwater Quality Association
P.O. Box 2313
Livermore, CA 94551
www.cabmphandbooks.com

Cashier
Los Angeles County DPW
900 South Fremont Avenue
Alhambra, CA 91803
Tel. No. (626) 458-6959

D. Implementation

The Contractor will be responsible throughout the duration of the project for the installation, monitoring, inspection and maintenance of the BMPs included in the SWPPP and for removing and disposing of temporary BMPs. The Contractor may be required to implement additional BMPs as a result of changes in actual field conditions, contractor's activities, or construction operations.

The Contractor shall demonstrate the ability and preparedness to fully deploy these SWPPP control measures to protect soil-disturbed areas of the project site before the onset of precipitation and shall maintain a detailed plan for the mobilization of sufficient labor and equipment to fully deploy these control measures.

Throughout the winter season, active soil-disturbed areas of the project site shall be fully protected at the end of each day with these control measures unless fair weather is predicted through the following day. The Contractor shall monitor daily weather forecasts. If precipitation is predicted prior to the end of the following workday, construction scheduling shall be modified, as required, and the Contractor shall deploy functioning control measures prior to the onset of the precipitation.

The City may order the suspension of construction operations which are creating water pollution if the Contractor fails to conform to the requirements of this section, "Water Pollution Control". Unless otherwise directed by the City, the Contractor's responsibility for SWPPP implementation shall continue throughout any temporary suspension of work.

E. Sewage Spill Prevention

The Contractor's attention is directed to the sewer bypass operation required during any sewer construction (Standard Specification for Public Works Construction Section 500.1.2.4).

The Contractor shall exercise extraordinary care to prevent the cause of events that may lead to a sewage spill. In the event of a sewage spill, the Contractor shall make arrangements for an emergency response unit comprised of emergency response equipment and trained personnel to be immediately dispatched to the project site.

The Contractor shall be fully responsible for preventing and containing sewage spills as well as recovering and properly disposing of raw sewage. In addition, the Contractor is responsible for any fines, penalties and liabilities arising from negligently causing a sewage spill. Any utility that is damaged by the contractor shall be immediately repaired at the Contractor's expense. The Contractor shall take all measures necessary to prevent further damage or service interruption and to contain and clean up the sewage spills.

F. Sewage Spill Telephone Notification

Should a sewage spill occur, the Contractor shall immediately report the incident to either one of these two City Divisions:

Sewer Maintenance Services (818) 548-3950

Fire Department Dispatch Center 911

The Contractor is encouraged to obtain telephone numbers, pager numbers and cellular telephone numbers of City representatives such as Project Managers and Inspectors. However, if these City representatives are not available, then the Contractor shall immediately call:

Environmental Program Administrator (818) 548-3900 (Weekdays)

Senior Environmental Program Specialist (661) 424-1447 (Weekends/Holidays)

The City will notify the following:

Los Angeles County Department of Health Services (213) 974-1234

Los Angeles County Department of Public Works (800) 303-0003

Regional Water Quality Control Board (213) 576-6665 or 6600

State Office of Emergency Services (800) 852-7550

(For any significant volume of material that entered the storm drain or receiving water)

G. Sewage Spill Written Notification

The Contractor shall prepare and submit a written report within three (3) Working Days from the occurrence of a spill to the City, (Attention: Project Manager). This report shall describe the following information related to the spill:

1. The exact location on the Thomas Guide map
2. The nature and volume
3. The date, time and duration
4. The cause
5. The type of remedial and/or cleanup measures taken and date and time implemented
6. The corrective and preventive action taken, and
7. The water body impacted and results of necessary monitoring

H. Enforcement

The City, as a permittee, is subject to enforcement actions by the LARWQCB, U.S. EPA, environmental groups and private citizens. The Contractor indemnify, defend and hold City, its officers, agents and employees harmless from Contractor's failure to comply and/or fulfill the

requirements set forth in this Section 2.16. Contractor shall be responsible for all costs and liabilities imposed by law as result of Contractor's failure to comply and/or fulfill the requirements set forth in this Section 2.16. The costs and liabilities include, but are not limited to fines, penalties and damages whether assessed against the City or the Contractor.

In addition to any remedy authorized by law, any money due to the Contractor under this contract shall be retained by the City until all costs and liabilities imposed by law against the City or Contractor have been satisfied.

I. Maintenance

The Contractor shall ensure the proper implementation and functioning of BMP control measures and shall regularly inspect and maintain the construction site for the BMPs identified in the SWPPP. The Contractor shall identify corrective actions and time frames in order to properly address any damaged measure, or reinstate any BMPs that have been discontinued.

If the City identifies a deficiency in the deployment or functioning of identified control measures, the deficiency shall be corrected by the Contractor immediately or by a later date and time if agreed to by Director and if requested in writing, but not later than the onset of the subsequent precipitation events. The correction of deficiencies shall be at no additional cost to the City.

J. Payment

All costs involved in the implementation of the SWPPP, including furnishing all labor, materials, tools, equipment and all incidentals; and for doing all the work involved in installing, constructing, maintaining, removing, and disposing of control measures, except those that were installed as a part of another structure, shall be included in the unit prices bid for the various related items of work and no additional compensation will be made therefor.

2.17 SOLID WASTE DISPOSAL AND DIVERSION

The Contractor shall submit to the Director the following summary of solid waste generated by the Work, disposed in Class III landfills, or diverted from disposal through recycling. Report disposal in inert fill separately. This form must be accompanied by legible copies of weight tickets, receipts, or invoices that specifically identify the project generating the material. Said documents must be from recyclers and/or disposal site operators that are acceptable to the Director. Further, the documents must be submitted to the Director with each application for progress payment. Failure to submit the form and its supporting documentation will render the application for progress payment incomplete and delay progress payments.

SUMMARY OF SOLID WASTE DISPOSAL AND DIVERSION

Project Title: _____

Specifications No. _____

Type of Material	(a) Disposed in Class III Landfills	(b) Diverted from Class III Landfills by Recycling	(c) [Leave This Column Blank]	(d) Disposed in Inert Fills
	Tons/CY	Tons/CY	Tons/CY	Tons/CY
Asphalt				
Concrete				
Metal				
Other Segregated Materials				

Type of Material	(a) Disposed in Class III Landfills	(b) Diverted from Class III Landfills by Recycling	(c) [Leave This Column Blank]	(d) Disposed in Inert Fills
(Describe):				
Miscellaneous Construction Waste				
Total				

Form to be submitted to Integrated Waste

SIGNATURE: _____

TITLE: _____

DATE: _____

2.18 RECYCLED, REUSABLE AND RECYCLABLE PRODUCTS

The Contractor is encouraged to support the City in recycling efforts. It is City policy that all City Divisions and Sections shall utilize recycled, reusable, and recyclable products to the maximum extent practicable. Preference will be given to recycled, reusable and recyclable products, over non-recycled, non-reusable and non-recyclable products, fitness and quality being equal, whenever available at no more than the total cost of non-recycled, non-reusable and non-recyclable products.

Contractors are encouraged to propose recycled, reusable and recyclable products for use by the City. Those items should be clearly identified. The City may require further information or documentation to ascertain the suitability/appropriateness of a proposed product.

All Contractors that provide goods, supplies, or equipment to the City that contain recycled material shall provide in writing to the Director the following information:

1. The minimum, if not the exact, percentage of recycled material, both post consumer waste and/or secondary waste, in the goods, supplies, or equipment; and
2. The quantity and total dollar amount of the goods, supplies or equipment provided to the City with recycled material content.

[END OF ARTICLE]

ARTICLE 3 TIME OF COMMENCEMENT AND COMPLETION

3.01 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK

A. Notice to Proceed

The Contractor is not authorized to perform any Work the Contract Documents until he/she has received from the City an official notification to commence Work. The date on which the notification is received by the Contractor is herein referred to as the Notice to Proceed. The Contractor shall commence Work within 14 calendar days after the date the Notice to Proceed is issued. The Notice to Proceed shall be issued after the Contract is properly executed, bonds are furnished and approved, and insurance has been submitted and approved.

B. Prosecution of the Work

Work shall be continued at all times with such force and equipment as will be sufficient to complete it within the specified time. The Contractor expressly proposes that he/she has taken into consideration and made allowances for all ordinary delays and hindrances to the Work to be performed and that he/she will complete the Work within the specified time.

C. Required Contract Completion

Time is of the essence in the completion of this Contract. The Work shall be completed in its entirety and made ready for service within _____ (_____) calendar days following issuance of the Notice to Proceed ("Contract Time"). By executing the Contract, Contractor confirms that the Contract Time is a reasonable period for performing the Work.

3.02 CITY'S DISCRETION TO EXTEND CONTRACT TIME

In the event the Work required hereunder is not satisfactorily completed in all parts and in compliance with the Contract Documents, City shall have the right, in its sole discretion, to increase the number of Working Days or not, as may seem best to serve the interest of City. A change order extending the Contract Time only will be issued by the City should the City decide to increase the number of Working Days.

3.03 SUBSTANTIAL COMPLETION

A. Contractor Request for Inspection and Punch List

When the Contractor considers that it has achieved Substantial Completion of the Work, Contractor shall prepare and submit to the Director a request for inspection and a comprehensive punch list of items to be completed or corrected prior to Final Payment. Failure to include an item on such punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

B. City Inspection

Upon receipt of the Contractor's punch list, the Director will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the inspection

discloses any item, whether or not included on the Contractor's punch list, which is not sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before City's issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by City. The Contractor shall then submit a request for another inspection by City to determine Substantial Completion.

C. Certificate of Substantial Completion

When the Work or designated portion thereof is substantially complete, the Director will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the City and Contractor for security, maintenance, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall finish all items on the Contractor's punch list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work.

3.04 DELAYS AND EXTENSIONS OF TIME FOR CONTRACTOR

- A. The Contractor shall take reasonable precautions to foresee and prevent delays to the Work. In the event of any delay to the Work, the Contractor shall revise his/her sequence of operations, to the extent possible under the terms of the Contract, to offset the delay.
- B. If any delay to the Work is caused by circumstances within the Contractor's control, it is not excusable and not compensable, and the Contractor will not be entitled to any extension of time or to any other compensation for damages resulting directly or indirectly therefrom.
- C. If any delay having a direct effect on the Work is caused by circumstances beyond the control of the Contractor except for causes of delay specified in Section 3.03-D., such delay may be excusable and may entitle the Contractor to an equivalent extension of time, but not to any other compensation. Excusable but not compensable causes include but are not limited to labor disputes, weather conditions unfavorable for prosecution of the Work, and force majeure.
- D. If any delay having a direct effect on the Work is caused by failure of the City to provide information as specified, or necessary instructions for carrying on the Work, or to provide the necessary right of way or site for installation, or failure of a utility to remove or relocate an existing facility such delay may be compensable and may entitle the Contractor to an equivalent extension of time, and to compensation for damages resulting directly from any of the causes of delay specified in this paragraph.
- E. The Contractor shall notify the Director in writing of any delay having a direct effect on the Work and the causes thereof within 15 days from the beginning of such delay.
- F. Any claim for an extension of time or for compensation for damages resulting from delay shall be made in writing to the Director not more than 30 days after the ending of such delay. The Contractor shall provide a written report evaluating the impact of the delay which shall include, at a minimum, all of the following:
 - 1. a narrative description of the delay and its impact on the critical path to Substantial Completion of the Work or a portion of the Work designated by City;
 - 2. a Fragnet;

3. a detailed breakdown of the Allowable Costs, if any, sought by Contractor due to the delay;
4. the number of days of extension sought by Contractor as an adjustment to the Contract time;
5. a statement that Contractor has complied with the requirements of the General Conditions for written notice of delays, along with the dates and copies of such notices;
6. the measures taken by Contractor and Subcontractors to prevent or minimize the delay; and
7. the Contractor's recommendations for reordering or re-sequencing the Work to avoid or minimize further delay.

No extension of time or compensation for damages resulting from delay will be granted unless the delay affects the timely completion of the overall Work under the Contract or the timely completion of a portion of the Work for which a time of completion is specified.

- G. The Director will investigate the facts and ascertain the extent of the delay, and his/her findings thereon shall be final and conclusive.
- H. Failure of the Contractor to give written notice of a delay, or to submit or document a claim for an extension of time or for damages resulting from delay in the manner and within the times stated above shall constitute a waiver of all claims thereto.
- I. When a Contractor experiences two concurrent delays, one compensable and the other excusable, no compensation other than an extension of time will be allowed.
- J. An extension of time must be approved by the Director to be effective, but an extension of time whether with or without consent of the sureties, shall not release the sureties from their obligations, which shall remain in full force until the discharge of the Contract.

3.05 CLIMATIC CONDITIONS

- A. The Director may suspend the Work whenever weather conditions or conditions resulting from inclement weather are unfavorable for the prosecution of the Work. The delay caused by such suspension may entitle the Contractor to an extension of time but not to any other compensation.
- B. If the Contractor believes that Work should be suspended under this Section 3.04, he/she may request such suspension. The delay caused by such suspension may entitle the Contractor to an extension of time but not to any other compensation.
- C. No extension of time will be granted for suspension of Work unless the suspension affects the timely completion of all Work under the Contract or the timely completion of a portion of the Work for which a time of completion is specified. Determination that the suspension for inclement weather conditions or conditions resulting from inclement weather affects timely completion and entitles the Contractor to an extension of time shall be made and agreed to in writing by the Director and the Contractor on each day that Work is suspended. In the event of failure to agree, the Contractor may protest under the provisions of Section 7.07.
- D. If Work is suspended and an extension of time is granted under this Section 3.04 the Contractor will be entitled to a one day extension of time for each day that he/she is unable to Work at least one-half of his/her current normal Work day; and if the Work is suspended at the regular starting time on any Work day and the Contractor's Workforce is dismissed as a result thereof, then he/she

will be entitled to a one day extension of time whether or not conditions change thereafter and the major portion of the day is suitable for Work.

3.06 COMPLETION AND ACCEPTANCE

- A. Upon request by the Contractor, the Director shall conduct a final inspection of the Work. If, in the Director's opinion, the Work has been completed and all conditions of the Contract Documents have been met the Director will issue a "Notice of Acceptance" of the Work. Upon the issuance of a Notice of Acceptance the Contractor will be relieved from responsibility to protect the Work.
- B. Within 10 calendar days after issuing the Notice of Acceptance, the Director will file with the County Recorder a "Notice of Completion".

3.07 LIQUIDATED DAMAGES

- A. Contractor and City agree to liquidate damages in the amount of \$ _____ (_____ Dollars) per day, with respect to Contractor's failure to achieve Substantial Completion of the Work within the Contract Time. The Parties intend for the liquidated damages set forth herein to apply to this Contract as set forth in Government Code Section 53069.85. Contractor acknowledges and agrees that the liquidated damages are intended to compensate City solely for Contractor's failure to meet the deadline for Substantial Completion and shall not excuse Contractor from liability from any other breach, including any failure of the Work to conform to the requirements of the Contract Documents.
- B. In the event that Contractor fails to achieve Substantial Completion of the Work within the Contract Time, Contractor agrees to pay City the amount specified in the Contract form for each calendar day that Substantial Completion is delayed.
- C. Contractor and City acknowledge and agree that the foregoing liquidated damages have been set based on an evaluation of damages that the City will incur in the event of late completion of the Work. Contractor and City acknowledge and agree that the amount of such damages are impossible to ascertain as of the effective date hereof and have agreed to such liquidated damages to fix City's damages and to avoid later disputes. It is understood and agreed by Contractor that liquidated damages payable pursuant to this Agreement are not a penalty and that such amount are not manifestly unreasonable under the circumstances existing as of the effective date of this Agreement.
- D. It is further mutually agreed that City shall have the right to deduct liquidated damages against progress payments or retainage and that the City will issue a unilateral Construction Change Directive and reduce the Contract Sum accordingly. In the event the remaining unpaid Contract Sum is insufficient to cover the full amount of liquidated damages. Contractor shall pay the difference to City.

[END OF ARTICLE]

ARTICLE 4 CONSTRUCTION SCHEDULES

4.01 BASELINE PROJECT SCHEDULE

Within fourteen (14) calendar days of the Pre-Construction meeting, or within fourteen (14) calendar days of the date that the Notice to Proceed is issued, whichever occurs first, Contractor shall submit a Baseline Project Schedule, in electronic format, showing in detail how the Contractor plans to execute and coordinate the Work.

A. Format

1. At a minimum, the Baseline Project Schedule activities shall be coded on a work-discipline basis (in accordance with CSI format) and by geographic area or location on the Project. The Baseline Project Schedule shall include a detailed description of each activity code. The Baseline Project Schedule shall be based on and incorporate contract milestone and completion dates specified in the Contract Documents. It shall depict events, jobs, and their interrelationships and shall recognize the progress that must be made on one task before subsequent tasks can begin. The schedule shall be comprehensive and shall include all logical interdependencies and interactions required to perform the Work of the Project.
2. Overall time of completion and time of completion for each milestone shown on the Schedule shall adhere to the specified Contract Time, unless an earlier (advanced) time of completion is requested by Contractor, agreed to by the City and formalized by Change Order.
3. Contractor shall use the latest version of Microsoft Project or equivalent software agreed to by the parties.
4. The City will review the submitted Baseline Project Schedule for conformance with these scheduling requirements. Within fourteen (14) calendar days after receipt, the City will accept the proposed Baseline Project Schedule or will return it with comments. If the proposed Baseline Project Schedule is accepted by the City, it shall be deemed part of the Contract Documents. If the Baseline Project Schedule is not accepted by City, Contractor shall revise the Baseline Project Schedule, in accordance with the recommendations of the City, and re-submit same for acceptance, no later than seven (7) calendar days after receipt of said recommendation.
5. Acceptance of Baseline Project Schedule by City, failure to include an element of work, or inaccuracy in Baseline Project Schedule shall not relieve Contractor from the responsibility for accomplishing the Work in accordance with the Contract Documents.

B. Float

1. Critical Work activities are defined as Work activities which, if delayed or extended, will delay the scheduled completion of the milestones and/or time of completion. All other Work activities are defined as non-critical Work activities and are considered to have float. Float is defined as the time that a non-critical Work activity can be delayed or extended without delaying the scheduled completion of the milestones and/or time of completion. Float is considered a Project resource available to either party or both parties as needed. Once identified, Contractor shall monitor, account for, and maintain float in accordance with Critical Path Methodology.

2. Delays of any non-critical Work shall not be the basis for an extension of Contract Time until the delays consume all float associated with that non-critical Work activity and cause the Work activity to become critical.
3. It is acknowledged that City-caused time savings (i.e., critical path submittal reviews returned in less time than allowed by the Contract Documents, approval of substitution requests which result in a savings of time for Contractor, etc.) create shared float. Accordingly, City-caused delays may be offset by City-caused time savings.

C. Weather [**Note: this section applies to projects of one (1) year duration or longer**]

The completion time contemplated by this Contract anticipates ten (10) lost days (Work Days) due to normal weather conditions annually and prorated for any duration less than twelve months. Only unusual or extreme weather conditions, as determined by the National Oceanic and Atmospheric Administration, for the time of year will be considered as justification for an extension of time to complete the Project, and only after the ten weather days have been utilized. Annual weather days are not cumulative, and unused days shall become "float" for the benefit of the project, and the schedule adjusted accordingly. The use of weather days by the Contractor shall be subject to all the conditions of claim for an extension of time. The Contractor shall notify the City in writing within ten (10) days of the commencement of each rain event.

D. Early Completion

While the Contractor may schedule completion of the Project earlier than the date established by the Contract Documents, no additional compensation shall become due the Contractor for the use of float time between the Contractor's projected early completion date and the date for Substantial Completion established by the Contract Documents, unless an earlier (advanced) time of completion is requested by Contractor, agreed to by the City, and formalized by Change Order.

4.02 SCHEDULE UPDATES

- A. With each Application for Payment submitted by Contractor (other than the final Application for Payment), the Contractor shall submit to the City an updated Project Schedule (an electronic copy in a P3 backup file format) revised to indicate the Work completed, status of Work in progress, all progress slippages, corrective actions taken, or slippage carry-over, for all anticipated delays or difficulties, and all other information required to accurately present the actual status of the progress of the Work as of the date of the Application for Payment. If the Contractor does not submit an updated Project Schedule with an Application for Payment, City may withhold payment, in whole or in part, until the updated Project Schedule is submitted. In the event that an update to the Project Schedule indicates a delay to the Contract Time the Contractor shall propose an affirmative plan to correct each such delay, including overtime and/or additional labor, if necessary. In no event shall any Project Schedule update constitute an adjustment in the Contract Time, any deadline, or the Contract Sum unless any such adjustment is agreed to by the City and authorized pursuant to Change Order or Unilateral Change Order.
- B. At no time shall historical data contained within the updated Project Schedule (i.e. completed activities) be removed and/or altered in any way. This historical data is to be preserved within each of the updated Project Schedules and submitted with the final schedule update to reflect the actual start and finish dates for each activity within the Schedule.
- C. Any work stoppages within individual work activities that exceed seven (7) calendar days in duration shall be clearly indicated within the updated Project Schedule. In cases where unplanned activity work stoppages exceed seven (7) calendar days activities shall be added to the Project Schedule to clearly

indicate the work stoppage period and identify forecasted resumption and completion of the activity where work has stopped. Contractor shall clearly note all schedule revisions within the Schedule Report required in Section 4.05 below.

4.03 NONCOMPENSABLE EXTRAORDINARY MEASURES

- A. Should the City determine, in its sole judgment, that the performance of the Work has not progressed to the level of completion required by the Contract Documents, City shall have the right to order the Contractor to take corrective measures to expedite the progress of construction, at no additional cost to the City, including, without limitation, the following:
1. Working additional shifts of overtime.
 2. Supplying additional manpower, equipment, and/or facilities.
 3. Reschedule activities to maximize practical concurrence of accomplishment of activities.
 4. Submitting a Recovery Schedule discussed above, for resequencing performance of the Work or other similar measures.
 5. Any other actions that may be necessary to mitigate delays.
- B. Such Extraordinary Measures shall continue until the progress of the Work is no longer behind schedule and/or reaches the stage of completion required by the Contract Documents. Contractor shall not be entitled to an adjustment in the Contract Sum in connection with the performance of any such Extraordinary Measures required by the City under this section. The City may exercise the rights furnished the City pursuant to this section as frequently as the City deems necessary to ensure that the Contractor's performance of the Work will comply with the Contract Time or interim completion dates set forth in the Contract Documents. If Contractor or its Subcontractors fail to implement or commence Extraordinary Measures within ten (10) calendar days of City's written demand, City may, without prejudice to other remedies, take corrective action at the expense of the Contractor which shall reduce the Contract Sum accordingly.

4.04 CONDITION OF PAYMENT

Compliance by Contractor with the requirements of the Contract Documents pertaining to preparation, submission, revising and updating of the Schedule is a condition precedent to City's obligation to make payment to Contractor of any or all sums that might otherwise be due to Contractor in the absence of such noncompliance. Payment by City under circumstances in which City, for any reason, fails or elects not to assert its right to withhold payment for noncompliance with this section shall not be construed as a waiver of the right to withhold future payments on account of such noncompliance or any other noncompliance.

[END OF ARTICLE]

ARTICLE 5 SUSPENSION OR TERMINATION OF CONTRACT

5.01 TERMINATION BY THE CONTRACTOR

A. Work Stoppage Not Caused by City

If the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, due to:

1. the issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped; or
2. an act of government, such as a declaration of national emergency which requires all Work to be stopped;

and Contractor has given City written notice within ten (10) days of the occurrence of such ground for termination, then the Contractor may, upon thirty (30) additional calendar days written notice to City and, unless the reason has theretofore been cured, terminate its performance and recover from the City payment for Work executed to date and reasonable demobilization costs.

B. Work Stoppage Caused by City

If the Work is stopped for a period of 120 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the City has persistently failed to fulfill the City's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may give City ten (10) calendar days written notice to cure. If the City fails to cure, the Contractor may, upon ten (10) additional calendar days written notice to the City, terminate the Contract and recover from the City as provided in Section 5.01-A above.

5.02 TERMINATION BY THE CITY FOR CAUSE

A. Grounds

The City may terminate the Contractor's performance of the Contract if:

1. Contractor fails promptly to begin the Work under the Contract Documents; or
2. Contractor refuses or fails to supply enough properly skilled workers or proper materials; or
3. Contractor fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein in constructing the Project, or refuses to remove and replace rejected materials or unacceptable Work; or
4. Contractor discontinues the prosecution of the Work (exclusive of work stoppage: (a) due to termination by City; or (b) due to and during the continuance of a Force Majeure event or suspension by City); or

5. Contractor fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from City to do so or (if applicable) after cessation of the event preventing performance; or
6. Any representation or warranty made by Contractor in the Contract Documents or any certificate, schedule, instrument, or other document delivered by Contractor pursuant to the Contract Documents shall have been false or materially misleading when made; or
7. Contractor fails to make payment to Subcontractors or Material Suppliers for materials or labor in accordance with the respective Contract Documents and applicable law; or
8. Contractor disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction; or
9. Contractor is guilty of breach of a provision of the Contract Documents; or
10. Contractor becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide City with adequate assurances of Contractor's ability to satisfy its contractual obligations.

A receiver, trustee, or other judicial officer shall not have any right, title, or interest in or to the Contract. Upon that person's appointment, City has, at its option and sole discretion, the right to immediately cancel the Contract and declare it null and void.

B. City's Rights.

When any of the reasons specified in Section 5.02-A exist, the City may, in addition to and without prejudice to any other rights or remedies of the City, and after giving the Contractor five (5) calendar days written notice, terminate employment of the Contract and may:

1. Take Possession of the Site and all materials, equipment, tools and construction equipment, and machinery thereon owned by the Contractor;
2. Suspend any further payments to Contractor;
3. Accept assignment of subcontracts from Contractor, at the sole discretion of City, and
4. Finish the Work by whatever reasonable method the City may deem expedient. Upon request of the Contractor, the City shall furnish to the Contractor a detailed accounting of the costs incurred by the City in finishing the Work.

C. Costs

If City's costs to complete and damages incurred due to Contractor's default exceed the unpaid Contract balance, the Contractor shall pay the difference to the City.

D. Erroneous Termination

If it has been adjudicated or otherwise determined that City has erroneously or negligently terminated the Contractor for cause, then said termination shall automatically convert to a termination by the City for convenience as set forth in Section 5.04.

5.03 SUSPENSION BY THE CITY

A. Suspension for Convenience.

1. The City may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the City may determine.
2. Contractor shall promptly recommence the Work upon written notice from City directing Contractor to resume the Work. The Contract Sum and Contract Time shall be adjusted for any increases in the cost and time caused by suspension, delay, or interruption provided Contractor complies with the Change Order and Claims proceedings set forth in these General Conditions. No adjustment shall be made to the extent:
 - (a) That performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or
 - (b) That an equitable adjustment is made or denied under another provision of the Contract.

B. Suspensions for Cause

City has the authority by written order to suspend the Work without liability to City in whole or in part for Contractor's failure to:

1. Correct conditions unsafe for the Project personnel or general public, or
2. Carry out the Contract; or
3. Carry out orders of City.

C. Responsibilities of Contractor During Suspension Periods

During periods that Work is suspended, Contractor shall continue to be responsible for the Work and shall prevent damage or injury to the Project, provide for drainage, and shall erect necessary temporary structures, signs or other facilities required to maintain the Project and continue to perform according to the Contract Documents.

5.04 TERMINATION BY THE CITY FOR CONVENIENCE

A. Grounds

Without limiting any rights which City may have by reason of any default by Contractor hereunder, City may terminate Contractor's performance of the Contract in whole or in part, at any time, for convenience upon written notice to Contractor. Such termination shall be effective as of the date stated in the written notice, which shall be no less than fifteen (15) calendar days from the date of the notice.

B. Contractor Actions

Immediately upon receipt of such notice, Contractor shall: (1) cease performance of the Work to the extent specified in the notice; (2) take actions necessary or that the City may direct, for the protection and preservation of the Work; (3) settle outstanding liabilities, as directed by City; (4) transfer title and deliver to City Work in progress, specialized equipment necessary to perform the

Work, and Record Documents; and, (5) except for Work directed by City to be performed, incur no further costs or expenses. At the option of the City, all or any of the subcontracts entered in to by Contractor prior to the date of termination shall be terminated or shall be assigned to City, at the election of the City.

C. Compensation

If the Parties are unable to agree on the amount of a termination settlement, the City shall pay the Contractor the following amounts:

1. For Work performed before the effective date of termination, the total (without duplication of any items) of:
 - (a) The Cost of Work; and
 - (b) A sum, as profit on (1)(a), above, determined by the City to be fair and reasonable;
2. The reasonable costs of settlement of the Work terminated, including:
 - (a) Accounting, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; and
 - (b) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

D. No Consequential Damages

Under no circumstances shall Contractor be entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Article 5. The payment to Contractor determined in accordance with this Article constitutes Contractor's exclusive remedy for a termination hereunder.

[END OF ARTICLE]

ARTICLE 6 CHANGES

6.01 CITY'S RIGHT TO ORDER CHANGES

The City, without invalidating the Contract, may authorize changes in the Work consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly, if necessary. All such changes in the Work shall be authorized by Change Order or Unilateral Change Order and Contractor shall perform such changes in the Work according to the applicable requirements of the Contract Documents.

6.02 FIELD DIRECTIVES

The City shall have the right, exercised in its sole discretion, to direct performance or order changes (including, without limitation, scope changes) in performance of the Work by issuing to Contractor a Field Directive. If Contractor believes such Field Directive constitutes a basis for adjustment to the Contract Sum or Contract Time, then Contractor shall give a Notice of Scope Change provided in Section 6.04, followed by a submission of a Change Order Request as required by Section 6.08. Contractor shall, if requested by City in such Field Directive or in a subsequent Field Directive, proceed with the performance of the work as contained in Field Directive. Any work performed by Contractor, either before or after issuance by Contractor of a Notice of Scope Change without authorization by Field Directive directing performance shall be deemed performed at Contractor's expense, at no cost to the City and without adjustment to the Contract Sum or Contract Time. Failure by Contractor after receipt of a Field Directive to comply with the Notice of Scope Change and Change Order Request procedures shall constitute a waiver by Contractor of the right to any adjustment to the Contract Sum or Contract Time on account of such Field Directive. Upon completion of the work affected by the Field Directive, Contractor shall give written notice that the work required is complete and ready for inspection.

6.03 NO ESTOPPEL

Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly and diligently with the change, unless otherwise provided in the Change Order or Unilateral Change Order. It is of the essence to this Contract that all scope changes in the Work that form the basis of an adjustment of the Contract Sum or Contract Time must be authorized in advance in writing through either a Change Order or Unilateral Change Order. A change in the Contract Sum or the Contract Time shall be accomplished only by Change Order or Unilateral Change Order. Accordingly, no verbal directions, course of conduct or dealings between the Parties, express or implied acceptance of alterations or additions to the Work, or claim that the Contract has been abandoned or the City has been unjustly enriched by any alteration or addition to the Work shall be the basis of any claim for an increase in any amounts due under the Contract Documents or a change in any time period provided in the Contract Documents.

6.04 NOTICE OF SCOPE CHANGE

Contractor shall submit written notice of any change in scope to the Director if, in the Contractor's opinion, any instruction, request, drawing, specification, action, condition, omission, default, or other situation occurs that the Contractor believes constitutes a scope change or other matter resulting in Extra Work, for which Contractor believes it is entitled to an adjustment of the Contract Sum or Contract Time. Such notice shall be provided prior to performance of the Work affected by such occurrence and within seven (7) calendar days after the discovery date of the circumstances of such scope change or other matters. The written

notice shall state the date, circumstances, extent of adjustment to the Contract Sum or the Contract Time, if any, requested. The mere presentation of such notice shall not establish the existence of any right by Contractor to adjustment of the Contract Sum or Contract Time. Failure to provide such timely written notice described herein shall constitute a waiver by Contractor of the right to any adjustment to the Contract Sum or Contract Time on account thereof.

6.05 CHANGE ORDERS

A. Computation

Methods used in determining adjustments to the Contract Sum by Change Order may include those listed in Section 6.06 below.

B. Accord and Satisfaction

Agreement on any Change Order shall be a full compromise and settlement of all adjustments to Contract Time and Contract Sum, and compensation for any and all delay, extended or additional field and home office overhead, disruption, acceleration, inefficiencies, lost labor or equipment productivity, differing Site conditions, construction interferences and other extraordinary or consequential damages (hereinafter called "Impacts"), including any ripple or cumulative effects of said Impacts on the overall Work under the Contract arising directly or indirectly from the performance of Work described in the Change Order. By execution of any Change Order, Contractor agrees that the Change Order constitutes a complete accord and satisfaction with respect to all claims for schedule extension, Impacts, or any costs of whatever nature, character or kind arising out of or incidental to the Change Order. No action, conduct, omission, product failure or course of dealing by the City shall act to waive, modify, change, or alter the requirement that (i) Change Order's must be in writing, signed by the City and Contractor and; (ii) that such written Change Orders are the exclusive method for effectuating any change to the Contract Sum and/or Contract Time.

6.06 CHANGE ORDER PRICING

A. Alternative Methods of Pricing

The amount of any adjustment by Change Order increasing or decreasing the Contract Sum shall be determined, in the sole discretion of City, using one or a combination of the following methods:

1. Lump Sum. By mutual acceptance of a lump sum proposal from Contractor properly itemized and supported by sufficient substantiating data to permit evaluation. Such proposal shall be based solely on Allowable Costs and Allowable Markups and shall not include any costs or expense that is not permitted by the terms of any provision of the Contract Documents.
2. Unit Prices. By unit prices contained in Contractor's original Bid and incorporated in Contract Documents or fixed by subsequent agreement between City and Contractor. Unless otherwise stated in the Bid Documents, unit prices stated in the Contract Documents or agreed upon by the County and Contractor shall be deemed to include and encompass all Allowable Markups.
3. Time and Materials. In the case of Extra Work only, by calculating the actual Allowable Costs directly incurred, plus a sum for Allowable Markups on such Allowable Costs.

B. Time and Materials Documentation

Without limitation to any other provisions of the Contract Documents, Contractor's right to reimbursement of Allowable Costs incurred for Extra Work involved in the performance of a scope change on a time and materials basis pursuant to Section 6.06-A.3, above shall be conditioned on its compliance with the following conditions:

1. Labor. At the close of each day on which such Extra Work is performed, Contractor shall submit an Extra Work labor report, on forms provided by Director, to Director that sets forth a list of the actual hours spent in performing the Extra Work, that clearly differentiates between the labor expended on the Extra Work and other work, and the Allowable Costs for such Extra Work performed that day showing the names of workers, their classifications, hours worked and hourly rates.
2. Materials, Equipment. A list of Allowable Costs of materials and equipment consumed in the performance of the Extra Work on the day on which such Extra Work is performed, together with copies of applicable delivery tickets and unit prices for all materials and for all equipment used the type of equipment, identification number, hours of operation (including loading and transportation) and hourly/daily rates involved for that day.
3. Other Services or Expenditures. A list of other services and expenditures constituting Allowable Costs incurred in performance of the Extra Work on the day on which such Extra Work is performed, along with documentation verifying the amounts thereof in such detail as Director may require.
4. Subsequent Documentation. Documentation not available on the day on which the Extra Work is performed, such as, but not limited to, material invoices, shall be submitted as soon as they are available but not later than five (5) calendar days after the earlier of the day of delivery or incorporation of the particular item of Extra Work at the Site.
5. Authentication. The Director may additionally require authentication of all time and material tickets and invoices by persons designated by the Director for such purpose.
6. Waiver by Contractor. Failure to submit such records as are required by this Paragraph daily shall waive any rights for recovery of Allowable Costs incurred for Extra Work performed that day. The failure of the Contractor to secure any required authentication shall, if the City elects in its sole discretion to treat it as such, constitute a waiver by the Contractor of any right to adjustment of the Contract Sum for the Allowable Cost of all or that portion of the Extra Work covered by such non-authenticated ticket or invoice.

C. Allowable Costs

The term "Allowable Costs" shall mean in the case of Extra Work actual costs incurred by Contractor and/or any Subcontractor, regardless of tier, and necessarily involved in direct performance of the Extra Work, or in the case of deleted work the actual costs that would have been incurred in performing deleted work by Contractor and/or any Subcontractor, regardless of tier, and shall be limited to the following costs:

1. Labor. Straight-time wages or salaries, and overtime wages and salaries specifically authorized by City in writing, for employees employed at the site, or at fabrication sites off the site, in the direct performance of the Extra Work or that would have been incurred in the direct

performance of the deleted work, based on the actual cost for wages prevailing locally for each craft or type of workers at the time the Extra Work is done or the deleted work is ordered eliminated. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. The use of labor classification which would increase the Allowable Cost for Extra Work will not be permitted unless Contractor establishes the necessity for such additional costs.

2. **Benefits.** Payroll taxes, insurance, health and welfare, pension, vacation, apprenticeship funds and benefits required by lawful collective bargaining agreements for employees on straight-time wages or salaries, and on overtime wages and salaries specifically authorized by City in writing, for employees employed at the site, or at fabrication sites off the site, in the direct performance of the Extra Work or that would have been incurred in the direct performance of the deleted work.
3. **Materials, Consumables.** Costs of materials and consumable items which are furnished and incorporated into the Work, as approved by City, or that would have been incorporated into the Work in the case of deleted work shall be at the lowest price available to Contractor but in no event shall such costs exceed competitive wholesale prices obtainable from other subcontractors, suppliers, manufacturers and distributors in the general vicinity of the site. If City determines, in its discretion, that the cost of materials is excessive, or if Contractor fails to furnish satisfactory evidence of the cost from the actual supplier thereof, then in either case the cost of the materials shall be deemed to be the lowest wholesale price at which similar materials are available in the quantities required at the time they were needed. The City reserves the right to furnish such materials as it deems advisable, and Contractor shall have no claim for costs or profits on materials so furnished.
4. **Taxes.** Sales taxes on the costs of materials and consumable items described in Section 5.04-C.3 above.
5. **Tool, Equipment Rental.** Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by City, exclusive of hand tools, used directly in the performance of the Extra Work or that would have been used in the direct performance of the deleted work. Regardless of ownership, such rental charges shall not exceed the hourly rate derived from the most recently published Rental Rate Blue Book for Construction Equipment or the Rental Rate Blue Book for Older Construction Equipment as published by K-111, San Jose, California, which is in effect at the time of commencement of the changed work (the "Blue Book"). Contractor shall attach a copy of the rate schedule to the daily reports required by Section 6.06-B, above. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work or deleted work. No charge shall be allowed for use of equipment or tools which have a replacement value of \$500 or less. The allowable rental rates shall include the cost of fuel, power oil, lubrication, supplies, small tools, necessary attachments, loading, transportation, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. Notwithstanding the provisions of Section 6.06-E below, no mark up shall be allowed for overhead, profit or bond premiums for use of equipment if the equipment is supplied by an equipment rental firm. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to City than holding it at the Site, it shall be returned, unless Contractor elects to keep it at the Site at no expense to City. Costs incurred while equipment is inoperative due to breakdowns, regular maintenance, or for non-Working Days shall not be allowed. The rental time shall include the time required to move the equipment to the Work from the nearest available source for rental of such equipment and to return it to the source. If such equipment is not moved by

its own power, then loading and transportation will be allowed. Neither moving time nor loading and transportation costs will be paid if the equipment is for use on the Project unrelated to the Extra Work. All equipment shall be acceptable to City, in good working condition, and suitable for the purpose for which it is to be used.

6. Royalties, Permits. Additional or saved costs of royalties and permits due to the performance of the Extra Work or deleted work.
7. Insurance, Bonds. Additional or saved costs of insurance and bonds, provided, however, that for Extra Work such costs shall not exceed one percent (1%) of Items 1 through 6 above.

D. Costs Not Allowed

Allowable Costs shall not include any of the following:

1. Wages, salaries, fringe benefits and payroll taxes of Contractor's and all Subcontractor's non-craft labor (above a Foreman level);
2. Overhead, administrative or general expenses of any kind including engineering, estimating, scheduling, drafting, detailing, etc., incurred in connection with Extra Work;
3. Vehicles not dedicated solely for the performance of the extra or deleted work;
4. Small tools (replacement value not exceeding \$500);
5. Office expenses, including secretarial and administrative staff, materials and supplies;
6. On-site and off-site trailer and storage rental and expenses;
7. Site fencing;
8. Utilities, including gas, electric, sewer, water, telephone, telefax, copier equipment;
9. Computer and data processing personnel, equipment and software;
10. Federal, state or local business income and franchise taxes;
11. Losses of efficiency or productivity; and
12. Costs and expenses of any kind or item not specifically and expressly included in Section 6.05-C.

E. Allowable Mark-ups

1. If the Net Cost of Extra Work is less than or equal to \$25,000, the Allowable Mark-Up shall be computed as follows:
 - (a) For Extra Work performed directly by the Contractor's forces, the added cost for all expenses, overhead, profit, bond and insurance shall not exceed fifteen percent (15%) of the net cost of the Extra Work.

- (b) For Extra Work performed by a subcontractor, the cost of combined expenses, overhead, profit, bond and insurance of both the Contractor and all subcontractor(s) shall not exceed twenty (20%) of the net cost of all subcontractor(s)'s Extra Work
- 2. If the net cost of Extra Work is greater than \$25,000 and less than or equal to \$100,000, the Allowable Mark-up shall be computed as follows:
 - (a) For Extra Work performed directly by the Contractor's forces the added cost for all expenses, overhead, profit, bond and insurance shall not exceed twelve (12%) of the net cost of the Extra Work.
 - (b) For Extra Work performed by a subcontractor, the cost of combined expenses, overhead, profit, bond and insurance of both the Contractor and all subcontractor(s) shall not exceed seventeen (17%) of the net cost of all subcontractor(s)'s Extra Work
- 3. If the net cost of Extra Work is greater than \$100,000, the Allowable Mark-up shall be computed as follows:
 - (a) For Extra Work performed directly by the Contractor's forces the added cost for all expenses, overhead, profit, bond and insurance shall not exceed ten percent (10%) of the net cost of the Extra Work
 - (b) For Extra Work performed by a subcontractor, the cost of combined expenses, overhead, profit, bond and insurance of both the Contractor and all subcontractor(s) shall not exceed fifteen (15%) of the net cost of all subcontractor(s)'s Extra Work

F. Net Allowable Costs

If any one scope change involves both Extra Work and deleted work in the same portion of the Work and the additive allowable costs exceed the deductive allowable costs, the Allowable Markups on the Extra Work will be only the difference between the two amounts.

6.07 CITY ORIGINATED PROPOSAL REQUEST

City may issue a request, in writing, to Contractor, describing a proposed change to the Work and requesting the Contractor submit an itemized proposal in a format acceptable to City within ten (10) calendar days after City issues the request. The Contractor's proposal shall include an analysis of impacts to cost and time, if any, to perform additional work, or delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs (broken down by the cost categories listed in this Section), and Contractor's proposed methods to minimize costs, delay, and disruption to the performance of the Work. If Contractor fails to submit a written proposal within such period of time, it shall be presumed that the change described in the City's original proposal request will not result in an increase to the Contract Sum or Contract Time and the change shall be performed by Contractor without additional compensation. City's proposal request does not authorize the Contractor to commence performance of the change, unless otherwise specified in writing. If City desires that the proposed change be performed, the Work shall be authorized according to the Change Order or Unilateral Change Order procedures set forth above.

6.08 CONTRACTOR ORIGINATED CHANGE ORDER REQUEST (COR)

If the Contractor believes that instructions issued by the City after the effective date of the Contract will result in changes to the Contract Sum or Contract Time or if the Contractor otherwise becomes aware of the need for or desirability of a change in the Work, Contractor may submit a written Change Order

Request ("COR") to the City in writing, in a format acceptable to City and in accordance with the notice provisions and other requirements of Article 6 above for Claims. The COR must specify the reasons for the proposed change, cost impacts and relevant circumstances and impacts on the Construction Schedule. The document shall be complete in its description of the Work, its material and labor quantities and detail, and must support and justify the costs and credits claimed by the Contractor. A CPM schedule Fragnet is required to support and justify any additional time of performance requested by the Contractor. The City will not review any COR which is incomplete. The Contractor may request additional compensation and/or time through a COR but not for instances that occurred more than ten (10) calendar days prior to the notice date. Contractor's failure to initiate a COR within this ten-day period or to provide detailed back-up documentation to substantiate the COR within thirty (30) calendar days of the initial written notice shall be deemed a waiver of the right to adjustment of the Contract Sum or the Contract Time for the alleged change. Any COR that is approved by the City shall be incorporated in a Change Order or construction Unilateral Change Order. If the COR is denied but the Contractor believes that it does have merit, the Contractor shall proceed with the disputed Work and may submit a Claim in accordance with the procedures set forth herein.

[END OF ARTICLE]

ARTICLE 7 CONTRACT PAYMENTS AND CLAIMS

7.01 GENERAL

- A. Payment will be made at the price for each item listed on the bidding form or as Extra Work as provided in the General Conditions.
- B. Initial progress payment will not be made prior to approval by the Director of the Schedule of Costs, the Construction Progress Schedule, and the Schedule of Submittals.
- C. No subsequent progress payment will be made prior to receipt by the Director of the monthly revision of the Construction Progress Schedule.

7.02 SCHEDULE OF VALUES FOR PAYMENTS

A. Submission

Contractor shall furnish, on forms approved by Director, within seven (7) calendar days after receiving the Notice of Award of the Construction Contract a detailed Schedule of Values giving a complete breakdown of the Contract Sum for each component of the Work.

B. Content

The Schedule of Values shall be in sufficient detail as the Director may, in its discretion, deem necessary to evaluate progress at any point in the performance of the Work. Unless otherwise specified in the Contract Documents, the Schedule of Values shall include, without limitation, a breakdown of the general categories of Subcontractor work, direct overhead, profit and contingency, and a further breakdown of the general categories of Subcontractor work into separate trade line items of costs for Subcontractor services, labor and material, which is based on actual Subcontractor contract, subcontract, purchase order or vendor prices. If requested by Director, Contractor shall revise the Schedule of Values to allocate sums for Contractor overhead, profit and/or contingency among the individual line items for trade portions of the Work. No amounts shall be reflected in the Schedule of Values or Application for Payment for Extra Work or Deleted Work for which a Change Order has not been executed by Contractor and City or for which a Unilateral Change Order has not been issued by City. Amounts that have been mutually agreed to by Change Order or unilaterally determined by City pursuant to a Unilateral Change Order shall, at the direction of the Director, be either separately listed by line item in the Schedule of Values or incorporated into the existing line item(s) of the trade(s) performing such Work. The Schedule of Values must be prepared in sufficient detail and supported by sufficient data to substantiate its accuracy as the Director may require.

C. Applications for Payment

The Schedule of Values, when approved by the Director, shall be used as a basis for Contractor's Applications for Payment and will not be considered as fixing a basis for adjustments to the Contract Sum.

D. Revisions

If, at any time, it is determined that the Schedule of Values does not allocate the Contract Sum in a manner that reasonably and fairly reflects the actual costs anticipated to be progressively incurred by Contractor, it shall be revised and resubmitted for approval by the Director.

7.03 APPLICATIONS FOR PAYMENT

A. Marked Schedule of Values

Five (5) Days prior to the date set forth in Section 7.03-B below for the monthly progress payment meeting, Contractor shall submit to Director a copy of the proposed Schedule of Values, marked to show the percentage of completion certified by Contractor for each line item in the Schedule of Values, including any stored materials approved for payment by City pursuant to Section 7.03-D, below and any withholdings from Contractor proposed by Director.

B. Monthly Review

For the purpose of expediting the progress payment procedure, Contractor shall meet with the Director on or before the twentieth (20th) day of each month to review the Contractor's marked Schedule of Values prepared in accordance with Section 7.03-A, above. The Director shall revise as appropriate and sign the marked Schedule of Values to verify such review. If any item in the marked Schedule of Values submitted for payment is disputed during this review, Contractor agrees to use its best efforts to resolve the disputed items with the Director before submitting its Application for Payment. If the Director and Contractor cannot agree, then the percentage completion shall be established at such percentage as the Director, in good faith, determines is appropriate to the actual progress of the Work. No inaccuracy or error in the Director's good faith estimate shall operate to release Contractor or Surety from any responsibility or liability arising from or related to performance of the Work. The Director shall have the right subsequently to correct any error and dispute any item submitted in Contractor's Application for Payment, regardless of whether an item was identified as disputed in the review process provided for herein.

C. Certification

Each Application for Payment shall be signed by Contractor with a certification by Contractor to City that:

1. the data comprising the Application for Payment is accurate and the Work has progressed to the point indicated;
2. to the best of Contractor's knowledge, information and belief, the Work is in accordance with the Contract Documents;
3. Contractor is entitled to payment in the amount certified; and
4. all sums previously applied for by Contractor on account of Work performed by Subcontractors and that have been paid by City have been paid to the Subcontractors performing such Work, without any retention, withholding or backcharge by Contractor.

D. Stored Materials

Payments may be made by City, at its discretion, on account of materials or equipment not incorporated into the Work but delivered on the ground at the Site and suitably stored by Contractor or stored off-Site under the control of City. Such payments shall only be considered upon submission by Contractor of satisfactory evidence that it has acquired title to same, that the material or equipment will be utilized in the Work and that the material is satisfactorily stored, protected and insured, and that such other procedures are in place satisfactory to City to protect City's interests. To be considered for payment, materials or equipment stored off-Site shall, in addition to the above requirements and unless otherwise specifically approved by City in writing, be stored in a bonded warehouse, fully insured, and available to City for inspection. City shall have sole discretion to determine the amount of material and equipment that may be stored on the Site at any given time.

7.04 PROGRESS PAYMENTS

A. Conditions to Progress Payments

Contractor shall submit its Application for Payment to the Director, using such forms as required by City, once a month on or before the first (1st) Day of the month following the month in which the Work that is the subject of such Application for Payment was performed. Without limitation to any other provisions of the Contract Documents, the following shall be conditions precedent to a proper submission and to the Director approval of each Application for Payment:

1. submission of a Schedule of Values that reflects the percentages of completion either agreed to or determined by Director in accordance with Section 7.03-B, above;
2. submission of the Contractor's certification required by Section 7.03-C, above;
3. submission of conditional releases of stop notice, if any, and bond rights upon progress payment, complying with California Civil Code Section 3262 (d) (1), for all Work performed during the time period covered by the current Application for Payment, signed by Contractor, its Subcontractors of every tier, and all material suppliers to each, and (2) forms of unconditional release of stop notice and bond rights upon progress payment, complying with California Civil Code Section 3262 (d) (2), for all Work performed during the time period covered by the previous Application for Payment, signed by Contractor, its Subcontractors of every tier and all material suppliers to each;
4. compliance by Contractor with its obligation for maintenance of As-Builts as required by the Contract Documents;
5. compliance by Contractor with its obligation for submission of monthly and daily reports as required by the Contract Documents;
6. compliance by Contractor with its obligations for submission of scheduling information and updating of the Construction Schedule as required by Article 4, above and other provisions of the Contract Documents pertaining to preparation or updating of schedule information;
7. submission of certified payroll records as required by the Contract Documents;

8. submission of certifications by Contractor and each Subcontractor as required by applicable collective bargaining agreements certifying that all employee benefit contributions due and owing pursuant to any applicable collective bargaining agreement have been paid in full; and
9. compliance by Contractor with all of its other obligations for submission of documentation or performance of conditions which, by the terms of the Contract Documents, constitute conditions to Contractor's right to receive payment for Work performed.

B. Payments by City

Pursuant to California Public Contract Code Section 20104.50, City shall make progress payment of undisputed sums due within thirty (30) Days after receipt by Director of an undisputed and properly submitted Application for Payment, calculated on the basis of ninety percent (90%) of value determined pursuant to Section 7.03-B above of the following:

1. the portion of the Work permanently installed and in place;
2. plus, the value of materials delivered on the ground or in storage as approved by City pursuant to Section 7.03-D, above,
3. less, the aggregate of previous payments, and
4. less, any other withholdings authorized by the Contract Documents.

C. Rejection by City

Any Application for Payment determined not to be undisputed, proper and suitable for payment shall be returned to Contractor as soon as practicable, but not later than seven (7) Days, after receipt by City accompanied by an written explanation of the reasons why the payment request was rejected. Failure by City or Director to either timely reject an Application for Payment or specify any grounds for rejection shall not constitute a waiver of any rights by City. Applications for Payment that are rejected shall be corrected and resubmitted within seven (7) Days after receipt by Contractor.

D. Interest

If City fails to make a progress payment to Contractor as required by Section 7.04-B, above, City shall pay interest to Contractor equivalent to the legal rate set forth in subdivision (a) of California Code of Civil Procedure Section 685.010. The number of Days available to City to make payment pursuant to Section 7.04-B, above without incurring interest pursuant to this Paragraph shall be reduced by the number of Days by which City exceeds the seven (7) Day return requirement applicable to City as set forth in Section 7.04-C, above,

7.05 FINAL PAYMENT

A. Retention

In addition to withholdings permitted by Section 7.09, below, a sum equal to ten percent (10%) of all sums otherwise due to Contractor as progress payments shall be withheld by City pursuant to Section 7.04-B from each progress payment and retained until such time as it is due as described in Section 7.06 below.

B. Conditions to Final Payment

Contractor shall submit its Application for Final Payment, (exclusive of retention as discussed in Section 7.06 below) using such forms as required by Director, on or before the first (1st) Day of the month following Final Completion of the Work. Such Application for Payment shall be accompanied by all the following:

1. an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project for which City or City's property or funds might be liable have been paid or otherwise satisfied;
2. Contractor's certification as required by Section 7.03-C, above;
3. consent of surety, if any, to Final Payment;
4. a certificate evidencing that the insurance required by the Contract Documents is in force;
5. conditional releases and waivers of stop notice and bond rights upon final payment in the form required by California Civil Code Section 3262 (d) (3) executed by Contractor, all Subcontractors of every tier and by all material suppliers of each;
6. all Record Documents (including, without limitation, complete and accurate As-Built drawings which shall be kept up to date during the performance of the Work);
7. certifications by Contractor and each Subcontractor as required by applicable collective bargaining agreements that all employee benefit contributions due and owing pursuant to any applicable collective bargaining agreement have been paid in full;
8. releases of rights and claims relating to patents and trademarks, as required by the Contract Documents;
9. [OPTIONAL: Contractor's Maintenance Bond]; and
10. any other documents or information required by the Contract Documents as a condition of Final Payment or Final Completion.

C. Final Payment

Within thirty-five (35) days after City approves the Notice of Completion and/or accepts the Project as complete, Final Payment shall become due to Contractor.

7.06 RETENTION PAYMENT

- A. Pursuant to the Public Contract Code Section 7107, within sixty (60) Days after City approves the Notice of Completion and/or accepts the Project as complete, the Retention withheld shall be released to Contractor. Contractor is not required to submit a Payment Request for release of the retention amounts. Further, as conditions precedent to the City's obligation to disburse Retention, the City must have received all documents and other items in Paragraph 7.05-B above.

B. Disputed Amounts

Pursuant to California Public Contract Code 7107, City may deduct and withhold from the Retention Payment due under Paragraph 7.06-A, above, an amount up to 150% of any disputed amounts, including, without limitation, amounts to protect City against any loss caused or threatened as a result of Contractor's failing to fully perform all of those obligations that are required to be fulfilled by Contractor as a condition to Final Completion and Final Payment. Alternatively, City may elect, in its sole discretion, to accept the Work without correction or completion and adjust the Contract Sum pursuant to the Contract Documents.

C. Acceptance of Retention Payment

Acceptance of Retention Payment by Contractor shall constitute a waiver of all rights by Contractor against City for recovery of any loss, excepting only those Claims that have been submitted by Contractor in the manner required by the Contract Documents prior to or at the time of the Retention Payment.

7.07 MISCELLANEOUS

A. Joint Payment

City shall have the right, if deemed necessary in its sole discretion, to issue joint checks made payable to Contractor and any Subcontractor(s) of any Tier. The joint check payees shall be solely responsible for the allocation and disbursement of funds included as part of any such joint payment. Endorsement on such check by a payee shall be conclusively presumed to constitute receipt of payment by such payee. In no event shall any joint check payment be construed to create any contract between City and a Subcontractor of any Tier, any obligation from City to such Subcontractor or any third party rights against City or Director.

B. Withholding

Neither the payment, the withholding nor the retention of all or any portion of any payment claimed to be due and owing to Contractor shall operate in any way to relieve Contractor from its obligations under the Contract Documents. Contractor shall continue diligently to prosecute the Work without reference to the payment, withholding or retention of any payment. The partial payment, withholding or retention by City in good faith of any disputed portion of a payment, whether ultimately determined to be correctly or incorrectly asserted, shall not constitute a breach by City of the Construction Contract and shall not be grounds for an adjustment of the Contract Sum or Contract Time.

C. No Acceptance

No payment by City or partial or entire use of the Work by City shall be construed as approval or acceptance of the Work, or any portion thereof.

D. Contractor Payment Warranty

Submission of an Application for Payment shall constitute a representation and warranty by Contractor that:

1. Title to Work covered by an Application for Payment will pass to City either by incorporation into the construction or upon receipt of payment by Contractor, whichever occurs first; and
2. Work covered by previous Applications for Payment are free and clear of liens, stop notices, claims, security interests or encumbrances imposed by the Contractor or any other person.

E. Corrections

No inaccuracy or error in any Application for Payment provided by Contractor shall operate to release Contractor from the error, or from losses arising from the Work, or from any obligation imposed by the Contract Documents. City retains the right to subsequently correct any error made in any previously approved Application for Payment, or progress payment issued, by adjustments to subsequent payments.

7.08 PAYMENTS BY CONTRACTOR

Contractor shall not include in its Applications for Payment sums on account of any Subcontractor's portion of the Work that it does not intend to pay to such Subcontractor. Upon receipt of payment from City, Contractor shall pay the Subcontractor performing Work on the Project, out of the amount paid to Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled in accordance with the terms of its contract with Contractor and applicable laws, including, without limitation, California Public Contract Code Section 7107. Contractor shall remain responsible notwithstanding a withholding by City pursuant to the terms of these Contract Documents, to promptly satisfy from its own funds sums due to all Subcontractors who have performed Work that is included in Contractor's Application for Payment. Contractor shall, by appropriate agreement, require each Subcontractor to make payments to its subcontractors and material suppliers in similar manner. City shall have no obligation to pay or be responsible in any way for payment to a Subcontractor of any tier or material supplier.

7.09 PAYMENTS WITHHELD

A. Withholding by City

In addition to any other amounts which City may have the right to retain under the Contract Documents, City may withhold a sufficient amount of any payment otherwise due to Contractor as City, in its sole discretion, may deem necessary to cover actual or threatened loss due to any of the following:

1. Third Party Claims. Third-party claims or stop notices filed or reasonable evidence indicating probable filing of such claims or stop notices;
2. Defective Work. Defective Work not remedied;
3. Nonpayment. Failure of Contractor to make proper payments to its Subcontractors for services, labor, materials or equipment;
4. Inability to Complete. Reasonable doubt that the Work can be completed for the then unpaid balance of the Contract Sum or within the Contract Time;
5. Violation of Applicable Laws. Failure of Contractor or its Subcontractors to comply with applicable laws or lawful orders of governmental authorities;

6. Penalty. Any claim or penalty asserted against City by virtue of Contractor's failure to comply with applicable laws or lawful orders of governmental authorities (including, without limitation labor laws);
7. Failure to Meet Contract Time. Any damages which may accrue as a result of Contractor failing to meet the Construction Schedule or failing to perform within the Contract Time;
8. Setoff. Any reason specified elsewhere in the Contract Documents as grounds for a withholding offset or set off or that would legally entitle City to a set-off or recoupment;
9. Consultant Services. Additional professional, consultant or inspection services required due to Contractor's failure to comply with the Contract Documents.
10. Liquidated Damages. Liquidated damages assessed against Contractor
11. Materials. Materials ordered by City pursuant to the Contract Documents.
12. Damages. Loss caused by Contractor or Subcontractor to City, Separate Contractors or any other person or entity under contract to City.
13. Clean Up. Clean up performed by City and chargeable to Contractor pursuant to the Contract Documents.
14. Employee Benefits. Failure of Contractor to pay contributions due and owing to employee benefits funds pursuant to any applicable collective bargaining agreement or trust agreement.
15. Required Documents. Failure of Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, Construction Schedule updates, 'look ahead' schedules, Submittals, Schedules of Values, information on Subcontractors, Change Orders, certifications and other required reports or documentation.
16. Other Breach. A breach of any obligation or provision of the Contract Documents.

B. Release of Withholding

If and when City determines, in its sole discretion, that the above grounds for withholding have been removed and that all losses incurred or threatened have been paid, credited or otherwise satisfied, then payment shall be made for amounts withheld because of them.

C. Application of Withholding

City may apply sums withheld pursuant to Section 7.09-A, above, in payment of any loss or threatened loss as City determines, in its sole discretion, to be appropriate. Such payments may be made without a prior judicial determination of City's actual rights with respect to such loss. Contractor agrees and hereby designates City as its agent for such purposes, and agrees that such payments shall be considered as payments made under Construction Contract by City to Contractor. City shall not be liable to Contractor for such payments made in good faith. City shall submit to Contractor an accounting of such funds disbursed on behalf of Contractor. As an alternative to such payment, city may, in its sole discretion, elect to exercise its right to adjust the Contract Sum as provided in the Contract Documents.

D. Continuous Performance

Provided City pays the undisputed portion, if any, of funds withheld in good faith, Contractor shall maintain continuous and uninterrupted performance of the Work during the pendency of any disputes or disagreements with City.

7.10 SUBSTITUTION OF SECURITIES

A. Public Contract Code

Pursuant to the requirements of California Public Contract Code Section 22300, upon Contractor's request, City will make payment to Contractor of any funds withheld from payments to ensure performance under the Contract Documents if Contractor deposits with City, or in escrow with a California or federally chartered bank in California acceptable to City ("Escrow Agent"), securities eligible for the investment of State Funds under Government Code Section 16430, or bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the City, upon the following conditions:

1. Contractor shall be the beneficial owner of any securities substituted for monies withheld for the purpose of receiving any interest thereon.
2. All expenses relating to the substitution of securities under said Section 22300 and under this Section 7.04, including, but not limited to City's overhead and administrative expenses, and expenses of Escrow Agent shall be the responsibility of Contractor.
3. Securities or certificates of deposit substituted for monies withheld shall be of a value of at least equivalent to the amounts of retention to be paid to Contractor pursuant to the Contract Documents.
4. If Contractor shall choose to deposit securities in lieu of monies withheld with an Escrow Agent, Contractor, City and Escrow Agent shall, as a prerequisite to such deposit, enter into an escrow agreement. Such escrow agreement shall be in the form "Escrow Agreement for Security Deposits in Lieu of Retention" in the form set forth in California Public Contracts Code Section 22300 (f).
5. Contractor shall obtain the written consent of Surety to such agreement.
6. Securities, if any, shall be returned to Contractor only upon satisfactory Final Completion of the Work.

B. Substitute Security

To minimize the expense caused by such substitution of securities, Contractor shall, prior to or at the time Contractor requests to substitute security, deposit sufficient security to cover the entire amount to be withheld. Should the current market value of such substituted security fall below the amount for which it was substituted, or any other amounts which the City withholds pursuant to the Contract Documents, Contractor shall immediately and at Contractor's expense and at no cost to City deposit additional security qualifying under said Section 22300 until the current market value of the total security deposited is no less than the amount subject to withholding under the Contract Documents. Securities shall be valued as often as conditions of the securities market warrant, but in no case less frequently than once per month.

C. Deposit of Retentions

Alternatively, subject to the conditions set forth in Section 7.04A, Above, upon request of Contractor, City shall make payment of retentions directly to Escrow Agent at the expense of Contractor, provided that Contractor, City and Escrow Agent shall, as a prerequisite such payment, enter into an escrow agreement in the same form as prescribed in Part 4 of Section A, above. At the expense of Contractor and at no cost to City, Contractor may direct the investment of the payments into securities and interest bearing accounts, and Contractor shall receive the interest earned on the investments. Escrow Agent shall hold such direct payments by City under the same terms provided herein for securities deposited by Contractor. Upon satisfactory Final Completion of the Work, Contractor shall receive from Escrow Agent all securities, interest and payments received by Escrow Agent from City, less escrow fees and charges of the Escrow Account, according to the terms of said Section 22300 and the Contract Documents.

D. Time for Election of Substitution of Securities

Notwithstanding the provision of 7.04 A, B, and C above and California Public Contract Code Section 22300, the failure of Contractor to request the Substitution of eligible securities for monies to be withheld by City within ten (10) days of the award of Contract to Contractor shall be deemed to be a waiver of all such rights.

7.11 CLAIMS

A. Arising of Claim.

1. Scope of Change. When Contractor has a claim for an increase in the Contract Sum or Contract Time due to a Scope Change which has not yet become final, a "claim" will be deemed to arise once the Director has issued a decision denying, in whole or in part, the Contractor's Change Order Request.
2. Other Claims. In the case of a Claim by Contractor that does not involve an adjustment to the Contract Sum or Contract Time due to a Scope Change and which has not become final, the Claim may be asserted if, and only if, Contractor gives written notice to City of intent to file the Claim within three (3) days of the date of discovery relative to such circumstances (even if Contractor has not yet been damaged or delayed). Such written notice of intent to file a Claim shall be valid if, and only if, it identifies the event or condition giving rise to the Claim, states its probable effect, if any with respect to Contractor's entitlement to an adjustment of the Contract Sum or Contract Time and complies with the requirements of Section 7.11-B, below. For purposes of this Section 7.11, a Claim for which such written notice is required and has been given by Contractor shall be deemed to arise on the date that such written notice is received by City.

B. Content of Claim

A Claim by Contractor must include all of the following:

1. A statement that it is a Claim and a request for a decision on the Claim;
2. A detailed description of the act, error, omission, unforeseen condition, event or other circumstance giving rise to the Claim.

3. If the Claim involves an adjustment to the Contract Sum or Contract Time due to a change in scope, a statement demonstrating that all requisite notices were provided, including, without limitation, timely written notice and a Change Order Request as required by Article 6 of these General Conditions and timely notice of delay and request for extension of time in accordance with Article 3. If the Claim does not involve an adjustment to the Contract Sum or Contract Time due to a change in scope, a statement demonstrating that a notice of intent to file the Claim was timely submitted as required by Section 7.11-A.2, above;
4. A detailed justification for any remedy or relief sought by the Claim including without limitation, a detailed cost breakdown in the form required for submittal of Change Order Requests and actual job cost records demonstrating that the costs have been incurred;
5. If the Claim involves a request for adjustment of the Contract Time, written documentation demonstrating that Contractor has complied with the requirements of the Contract Documents and written substantiation (including, without limitation, a Time Impact Analysis) demonstrating that Contractor is entitled to an extension of time under the Contract Documents; and
6. A written certification signed by a managing officer of Contractor's organization, who has the authority to sign contracts and purchase orders on behalf of Contractor and who has personally investigated and confirmed the truth and accuracy of the matters set forth in such certification, in the following form:

"I hereby certify under penalty of perjury that I am a managing officer of (Contractor's name) and that I have reviewed the Claim presented herewith on Contractor's behalf and/or on behalf of (Subcontractor's name) and that, to the best of my knowledge after conducting a diligent inquiry into the facts of the Claim, the following statements are true and correct:

The facts alleged in or that form the basis for the Claim are, to the best of my knowledge following diligent inquiry, true and accurate; and,

(a) I do not know of any facts or circumstances, not alleged in the Claim, that by reason of their not being alleged render any fact or statement alleged in the Claim materially misleading; and,

(b) I have, with respect to any request for money or damages alleged in or that forms the basis for the Claim, reviewed the job cost records (including those maintained by Contractor and by any Subcontractor, of any tier, that is asserting all or any portion of the Claim) and confirmed with reasonable certainty that the losses or damages suffered by Contractor and/or such Subcontractor were in fact suffered in the amounts and for the reasons alleged in the Claim; and,

(c) I have, with respect to any request for extension of time or claim of delay, disruption, hindrance or interference alleged in or that forms the basis for the Claim, reviewed the job schedules (including those maintained by Contractor and the Subcontractor, of any tier, that is asserting all or any portion of the Claim) and confirmed on an event-by-event basis that the delays or disruption suffered by Contractor and/or such Subcontractor were in fact experienced for the durations, in the manner, and with the consequent effects on the time and/or sequence of performance of the Work, as alleged in the Claim; and,

(d) I have not received payment from City for, nor has Contractor previously released City from, any portion of the Claim."

Signature: _____ Date: _____

Name: _____

Title: _____

Company _____

C. Noncompliance

Failure to submit any of the information, documentation or certifications required by Section 7.11-B, above, shall result in the Claim being returned to Contractor without any decision.

D. Submission of Claims

1. Director. Claims shall be first submitted to the City for decision by the Director.
2. Continuous Work. Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by City, Contractor shall not delay, slow or stop performance of the Work, but shall diligently proceed with performance in accordance with the Contract Documents and City will continue, to make undisputed payments as by the Contract Documents.
3. Time for Filing. All Claims and supporting documentation and certifications must be filed within thirty (30) days after the Claim arises. No Claims shall be filed after Final Payment.
4. Conditions Precedent. No Claim may be asserted unless Contractor has strictly complied with the requirements of this Section 7.11-D, which shall be considered conditions precedent to Contractor's right to assert the Claim and to initiate the Dispute Resolution Process with respect to such Claim.

E. Response to Claims, Meet and Confer

1. Claims Under \$50,000. Claims less than \$50,000 shall be responded to by City in writing within forty-five (45) days of receipt of the Claim, unless City requests additional information or documentation of the Claim within thirty (30) days of receipt of the Claim, in which case City shall respond to the Claim within fifteen (15) days after receipt of the further information or documentation or within a period of time no greater than that taken by Contractor in producing the additional information or documentation, whichever is greater.
2. Claims Over \$50,000. Claims over \$50,000 shall be responded to by City in writing within (60) days of receipt of the Claim, unless City requests additional information or documentation of the Claim within thirty (30) days of receipt of the Claim, in which case City shall respond to the Claim within thirty (30) days after receipt of the further information or documentation or within a period of time no greater than that taken by Contractor in producing the additional information or documentation, whichever is greater.

3. Meet and Confer. If Contractor disputes City's response, or if City fails to respond within the prescribed time set forth in Section 7.11-E.1 and 7.11-E.2, above, Contractor may so notify City, in writing, within fifteen (15) days of City's response, or within fifteen (15) days of City's response due date in the event of a failure to respond, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon such demand, City shall schedule a meet and confer conference within thirty (30) days of such demand, for discussion of settlement of the dispute.

F. Finality of Decision

If Contractor disputes the Director's decision under this Article, it shall commence the Dispute Resolution Process as set forth in Article 15 of these General Conditions by filing a Statement of Dispute within seven (7) days after receipt of the Director's response.

[END OF ARTICLE]

ARTICLE 8 MATERIALS AND EQUIPMENT

8.01 GENERAL

- A. The Contractor shall furnish all materials and equipment needed to complete the Work and installations required under the terms of this Contract, except those materials and equipment specified to be furnished by the City.
- B. The Contractor shall submit satisfactory evidence that the materials and equipment to be furnished and used in the work are in compliance with the Specifications. Materials and equipment incorporated in the Work and not specifically covered in the Specifications shall be the best of their kind. Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new.

8.02 QUALITY AND WORKMANSHIP

All materials and equipment must be of the specified quality and equal to approved samples, if samples have been required. All Work shall be done and completed in a thorough, Workmanlike manner, notwithstanding any omission from the Specifications or Drawings, and it shall be the duty of the Contractor to call attention to apparent errors or omissions and request instructions before proceeding with the Work. The Director may, by appropriate instructions, correct errors and supply omissions, which instructions shall be binding upon the Contractor as though contained in the original Specifications or Drawings. All Work performed under the Specifications will be inspected by the Director as provided in Section 8.04. All materials and equipment furnished and all Work done must be satisfactory to the Director. Work, material, or equipment not in accordance with the Specifications, in the opinion of the Director shall be made to conform thereto. Unsatisfactory materials and equipment will be rejected, and if so ordered by the Director, shall, at the Contractor's expense, be immediately removed from the vicinity of the Work.

8.03 TRADE NAMES AND "OR APPROVED EQUAL" PROVISION

Whenever in the Specifications or Drawings the name or brand of a manufactured article is used it is intended to indicate a measure of quality and utility or a standard. Except in those instances where the product is designated to match others in use on a particular improvement either completed or in the course of completion, the Contractor may substitute any other brand or manufacture of equal appearance, quality, and utility on approval of the Director, provided the use of such brand or manufacture involves no additional cost to the City.

8.04 APPROVAL OF MATERIALS

- A. The Contractor shall furnish without additional cost to the City such quantities of construction materials as may be required by the Director for test purposes. He/she shall place at the Director's disposal all available facilities for and cooperate with him in the sampling and testing of all materials and workmanship. The Contractor shall prepay all shipping charges on samples. No samples are to be submitted with the bids unless otherwise specified.
- B. Each sample submitted shall be labeled. A letter, in duplicate, submitting each shipment of samples shall be mailed to the Director by the Contractor. Both the label on the sample and the letter of transmittal shall indicate the material represented, its place of origin, the names of the producer and

the Contractor, the Specifications number and title, and a reference to the applicable Drawings and Specifications paragraphs.

- C. Materials or equipment of which samples are required shall not be used on the Work until approval has been given by the Director in writing. Approval of any sample shall be only for the characteristics of the uses named in such approval and no other. No approval of a sample shall be taken in itself to change or modify any Contract requirement.
- D. Failure of any material to pass the specified tests, including life cycle maintenance data may be sufficient cause for refusal to consider under this Contract, any further sample of the same brand or make of that material.

8.05 ORDERING MATERIALS AND EQUIPMENT

One copy of each of the Contractor's purchase orders for materials and equipment forming a portion of the Work must be furnished to the Director, if requested. Each such purchase order shall contain a statement that the materials and equipment included in the order are subject to inspection by the City. Materials and equipment purchased locally will, at the City's discretion, be inspected at the point of manufacture or supply, and materials and equipment supplied from points outside the Los Angeles area will be inspected upon arrival at the job, except when other inspection requirements are provided for specific materials in other sections of the Contract Documents.

8.06 AUTHORITY OF THE DIRECTOR

- A. On all questions concerning the acceptability of materials or machinery, the classification of materials, the execution of the Work, and conflicting interests of Contractors performing related work, the decision of the Director shall be final and binding.
- B. The Director will make periodic observations of materials and completed work to observe their compliance with Plans, Specifications, and design and planning concepts, but he/she is not responsible for the superintendence of construction processes, site conditions, operations, equipment, personnel, or the maintenance of a safe place to work or any safety in, on, or about the site of work.

8.07 INSPECTION

All materials furnished and work done under this Contract will be subject to rigid inspection. The Contractor shall furnish, without extra charge, the necessary test pieces and samples, including facilities and labor for obtaining them, as requested by the Director. The Director, or his/her authorized agent or agents, at all times shall have access to all parts of the shop and the works where such materials under his/her inspection is being manufactured or the work performed. Work or material that does not conform to the Specifications, although accepted through oversight, may be rejected at any stage of the Work. Whenever the Contractor is permitted or directed to do night work or to vary the period during which work is carried on each day, he/she shall give the Director due notice, so that inspection may be provided. Such work shall be done under regulations to be furnished in writing by the Director.

8.08 INFRINGEMENT OF PATENTS

The Contractor shall hold and save the City, its officers, agents, servants, and employees harmless from and against all and every demand or demands, of any nature or kind, for or on account of the use of any patented invention, process, equipment, article, or appliance employed in the execution of the Work or included in the materials or supplies agreed to be furnished under this Contract, and should the Contractor, his/her agents,

servants, or employees, or any of them, be enjoined from furnishing or using any invention, process, equipment, article, materials, supplies or appliance supplied or required to be supplied or used under this Contract, the Contractor shall promptly substitute other inventions, processes, equipment, articles, materials, supplies, or appliances in lieu thereof, of equal efficiency, quality, finish, suitability, and market value, and satisfactory in all respects to the Director. Or in the event that the Director elects, in lieu of such substitution, to have, supplied, and to retain and use, any such invention, process, equipment, article, materials, supplies, or appliances, as may by this Contract be required to be supplied and used, in that event the Contractor shall at his/her expense pay such royalties and secure such valid licenses as may be requisite and necessary to enable the City, its officers, agents, servants, and employees, or any of them, to use such invention, process, equipment, article, materials, supplies, or appliances without being disturbed or in way interfered with by any proceeding in law or equity on account thereof. Should the Contractor neglect or refuse promptly to make the substitution hereinbefore required, or to pay such royalties and secure such licenses as may be necessary and requisite for the purpose aforesaid, then in that event the Director shall have the right to make such substitution, or the City may pay such royalties and secure such licenses and charge the cost thereof against any money due the Contractor from the City, or recover the amount thereof from him/her and his/her surety, notwithstanding final payment under this Contract may have been made.

[END OF ARTICLE]

ARTICLE 9 SUBMITTALS

9.01 GENERAL

- A. The Contractor shall submit samples, drawings, and data for the Director's approval which demonstrate fully that the construction, and the materials and equipment to be furnished will comply with the provisions and intent of these Plans and Specifications.
- B. Specific items to be covered by the submittals shall include, as a minimum, the following:
 - 1. For structures, submit all shop, setting, equipment, miscellaneous iron and reinforcement drawings and schedules necessary.
 - 2. For conduits, submit a detailed layout of the conduit with details of bends and fabricated specials and furnish any other details necessary. Show location of shop and field welds.
 - 3. For equipment which requires electrical service, submit detailed information to show power supply requirements, wiring diagrams, control and protection schematics, shop test data, operation and maintenance procedures, outline drawings, and manufacturer's recommendation of the interface/interlock among the equipment.
 - 4. For mechanical equipment submit all data pertinent to the installation and maintenance of the equipment including shop drawings, manufacturer's recommended installation procedure, detailed installation drawings, test data and curves, maintenance manuals, and other details necessary.
 - 5. Samples
 - 6. Colors
 - 7. Substitutions
 - 8. Manuals
 - 9. As-built drawings
 - 10. Safety plans required by Article 10

9.02 PRODUCT HANDLING

- A. Submittals shall be accompanied by a letter of transmittal and shall be in strict accordance with the provisions of this section.
- B. Submit priority of processing when appropriate.

9.03 SCHEDULE OF SUBMITTALS

- A. The Contractor shall prepare and submit a schedule of submittals. The schedule of submittals shall be in the form of a submittal log. Refer to Section 9.12.

9.04 SHOP DRAWINGS

- A. All shop drawings shall be produced to a scale sufficiently large to show all pertinent features of the item and its method of connection to the Work.
- B. All shop drawing prints shall be made in blue or black line on white background. Reproductions of City/Contract Drawings are not acceptable.
- C. The overall dimensions of each drawing submitted to the Director shall be equal to one of the City's standard sheet sizes as listed below. The title block shall be located in the lower right hand corner of each drawing and shall be clear of all line Work, dimensions, details, and notes.

Sheet Sizes	
<u>Height</u>	<u>X Width</u>
11"	X 8 1/2"
11"	X 17"
24"	X 36"
30"	X 42"

9.05 COLORS

Unless the precise color and pattern are specified elsewhere, submit accurate color charts and pattern charts to the Director for his/her review and selection whenever a choice of color or pattern is available in a specified product. Label each chart naming the source, the proposed location of use on the project, and the project.

9.06 MANUFACTURERS' LITERATURE

Where contents of submitted literature from manufacturers includes data not pertinent to the submittal, clearly show which portions of the contents are being submitted for review.

9.07 SUBSTITUTIONS

- A. The Contract is based on the materials, equipment, and methods described in the Contract Documents. Any Contractor proposed substitutions are subject to the Director's approval.

The Director will consider proposals for substitution of materials, equipment, and methods only when such proposals are accompanied by full and complete technical data, and all other information, including life cycle maintenance data, required by the Director to evaluate the proposed substitution.
- B. Any requests for substitutions by the Contractor must be made within forty-five (45) calendar days from the date on the Notice to Proceed. Otherwise, such requests will not be considered.
- C. Trade names and "or approved equal" provision as set forth in Section 8.03.

9.08 MANUALS

- A. When manuals are required to be submitted covering items included in this Work, prepare and submit such manuals in approximately 8-1/2" X 11" format in durable plastic binders. In addition, manuals shall be submitted in electronic format. Manuals shall contain at least the following:
 - 1. Identification on, or readable through, the front cover stating general nature of the manual.

2. Neatly typewritten index near the front of the manual, furnishing immediate information as to location in the manual of all emergency data regarding the installation.
 3. Complete instructions regarding operation and maintenance of all equipment involved.
 4. Complete nomenclature of all replaceable parts, their part numbers, current cost, and name and address of nearest vendor of parts.
 5. Copy of all guarantees and warranties issued.
 6. Copy of drawings with all data concerning changes made during construction.
- B. Where contents of manuals include manufacturers' catalog pages, clearly indicate the precise items included in this installation and delete, or otherwise clearly indicate, all manufacturers' data with which this installation is not concerned.

9.09 AS-BUILT DRAWINGS

- A. When required to be submitted covering items included in this Work, the Contractor shall deliver to the City one complete set of final As-Built hard copy drawings together with a set of AutoCAD drawing files in electronic format showing completed building, "as-built" for City records before the Contract will be accepted by the City.
- B. The drawings shall be duplicates and at the same size and dimensional scale as the originals. They shall be on a polyester translucent base material with a minimum sheet thickness of .003 inch (.08mm).
- C. The legibility and contrast of each drawing submitted to the City shall be such that every line, number, letter, and character is clearly readable in a full size blow back from a 35 mm microfilm negative of the drawing.

9.10 SUBMITTALS QUANTITIES

- A. Submit seven (7) copies of all data and drawings unless specified otherwise.
- B. Submit all samples, unless specified otherwise, in the quantity to be returned, plus two, which will be retained by the Director.

9.11 IDENTIFICATION OF SUBMITTALS

Completely identify each submittal and re-submittal by showing at least the following information:

- A. Name and address of submitter, plus name and telephone number of the individual who may be contacted for further information.
- B. Name of project as it appears in the Contract Documents and Specifications No.
- C. Drawing number and Specifications section number other than this section to which the submittal applies.
- D. Whether this is an original submittal or re-submittal.

- E. For samples, indicate the source of the sample.

9.12 SCHEDULE OF SUBMITTALS

- A. Submit initial schedule of submittals within five (5) Working Days after issuance of Notice to Proceed.
- B. Submit revised schedule of submittals within five (5) Working Days after date of request from the Director.
- C. The Director will review schedule of submittals and will notify Contractor that schedule is acceptable or not acceptable within five (5) Working Days after receipt.

9.13 COORDINATION OF SUBMITTALS

- A. Prior to submittal for the Director's review, use all means necessary to fully coordinate all material, including the following procedures:
 - 1. Determine and verify all field dimensions and conditions, materials, catalog numbers, and similar data.
 - 2. Coordinate as required with all trades and with all public agencies involved.
 - 3. Secure all necessary approvals from public agencies and others and signify by stamp, or other means, that they have been secured.
 - 4. Clearly indicate all deviations from the Specifications.
- B. Unless otherwise specifically permitted by the Director, make all submittals in groups containing all associated items; the Director may reject partial submittals as not complying with the provisions of the Specifications.

9.14 TIMING FOR SUBMITTALS

- A. Make all submittals far enough in advance of scheduled dates of installation to provide all required time for reviews, for securing necessary approvals, for possible revision and re-submittal, and for placing orders and securing delivery.
- B. In scheduling, allow at least 15 Working Days for the Director's review, plus the transit time to and from the City office.
- C. Manuals shall be submitted prior to performing functional tests.

9.15 APPROVAL BY CITY

- A. Up to three (3) copies of each submittal, except manuals, schedule of costs for progress payments, and as-built drawings will be returned to the Contractor marked "No Exceptions Taken," "Make Corrections Noted - Do Not Resubmit," or "Make Corrections Noted - Resubmit." Manuals, schedule of costs, and as-built drawings will be returned for re-submittal if incomplete or unacceptable.
- B. Submittals marked "Approved as Noted" need not be resubmitted, but the notes shall be followed.
- C. If submittal is returned for correction, it will be marked to indicate what is unsatisfactory.

- D. Resubmit revised drawings or data as indicated, in five (5) copies.
- E. Approval of each submittal by the Director will be general only and shall not be construed as:
 - 1. Permitting any departures from the Specifications requirements.
 - 2. Relieving the Contractor of the responsibility for any errors and omissions in details, dimensions, or of other nature that may exist.
 - 3. Approving departures from additional details or instructions previously furnished by the Director.

9.16 CHANGES TO APPROVED SUBMITTALS

- A. A re-submittal is required for any proposed change to an approved submittal. Changes which require re-submittal include, but are not necessarily limited to, drawing revisions, changes in materials and equipment, installation procedures and test data. All re-submittals shall include an explanation of the necessity for the change.
- B. Minor corrections to an approved submittal may be accomplished by submitting a "Corrected Copy".

[END OF ARTICLE]

ARTICLE 10 SAFETY

10.01 PROTECTION OF PERSONS AND PROPERTY

Contractor's Responsibility: Notwithstanding any other provision of the Contract Documents, the Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons and property, during performance of the Work. This requirement will apply continuously and will not be limited to normal working hours. Safety and sanitary provisions shall conform to all applicable Federal, State, County, and local laws, regulations, ordinances, standards, and codes. Where any of these are in conflict, the more stringent requirement shall be followed.

10.02 PROTECTION FROM HAZARDS

A. Trench Excavation

Excavation for any trench four (4) feet or more in depth shall not begin until the Contractor has received approval from the Director of the Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of such trench. Such plan shall show the details of the design of shoring, bracing, sloping or other provisions to be made for worker protection during such excavation. No such plan shall allow the use of shoring, sloping or protective system less effective than that required by the Construction Safety Orders of the Division of Occupational Safety and Health, and if such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and signed by an engineer who is registered as a Civil or Structural Engineer in the State of California.

B. Confined Spaces

Contractor shall comply with all of the provisions of General Industry Safety Orders of the California Code of Regulations. Entry of a confined space shall not be allowed until the Contractor has received approval from the Director of the Contractor's program for confined space entry. Confined space means a space that (1) Is large enough and so configured that an employee can bodily enter and perform assigned Work; and (2) Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and (3) Is not designed for continuous employee occupancy. Failure to submit a confined space entry program may result in actions as provided in Article 5: "Suspension or Termination of Contract".

C. Material Safety Data Sheet

Contractor shall comply with all of the provisions of General Industry Safety Orders of the California Administrative Code. The Contractor shall submit to the Director a Material Safety Data Sheet (MSDS) for each hazardous substance proposed to be used, ten (10) days prior to the delivery of such materials to the job site or use of such materials at a manufacturing plant where the Director is to perform an inspection. For materials which are to be tested in City laboratories, the MSDS shall be submitted with the sample(s). Hazardous substance is defined as any substance included in the list (Director's List) of hazardous substances prepared by the Director, California Department of Industrial Relations, pursuant to Labor Code Section 6382. Failure to submit an MSDS for any hazardous substance may result in actions as provided in Article 5, "Suspension or Termination of Contract".

10.03 DIFFERING SITE CONDITIONS

- A. Differing Site Conditions Defined. The Contractor shall promptly, and before such conditions are disturbed, notify the Director in writing of any Differing Site Conditions. Differing Site Conditions are those conditions, located at the project site or in existing improvements and not otherwise ascertainable by Contractor through the exercise of due diligence in the performance of its inspection obligations in the Contract Documents, encountered by Contractor in digging trenches or other excavations(s) that extend deeper than four feet below the surface of the ground that constitute:
1. Material that the Contractor believes may be material that is hazardous waste as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 2. Subsurface or latent physical conditions at the site differing materially from those indicated in these Contract Documents.
 3. Unknown physical conditions at the site, of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in these Contract Documents.
- B. Notice by Contractor. If the Contractor encounters conditions it believes constitute Differing Site Conditions, then notice of such conditions shall, before such conditions are disturbed, be promptly reported to the Director followed within twenty-four (24) hours by a further written notice stating a detailed description of the conditions encountered.
- C. The Director will promptly investigate the conditions and If he/she finds that such conditions do materially differ, or do involve hazardous waste, and do cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work under this Contract, an equitable adjustment will be made, as determined by the Director.
- D. Change Order Request. If Contractor intends to seek an adjustment to the Contract Sum or Contract Time based upon Differing Site Conditions, it must, within ten (10) Days after the Discovery Date relative to such conditions, submit a Change Order Request setting forth a detailed cost breakdown and Time Impact Analysis, in the form required by Article 6 of these General Conditions, of the additional Allowable Costs and Excusable Delay resulting from such Differing Site Conditions.
- E. Failure to Comply. Failure by Contractor to strictly comply with the requirements of this Section 10.03 concerning the timing and content of any notice of Differing Site Conditions or request for adjustment in Contract Sum or Contract Time based on Differing Site Conditions shall be deemed waiver of any right by the Contractor for an adjustment in the Contract Sum or Contract Time by reason of such conditions.
- F. Final Completion. No claim by the Contractor for additional compensation for Differing Site Conditions shall be allowed if asserted after Final Payment.
- G. In the event of disagreement between the Contractor and the Director whether the conditions do materially differ or whether a hazardous waste is involved or whether the conditions cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any completion date required by the Contract, but shall proceed with all Work to be performed under the Contract Documents.

- H. The Contractor shall retain all rights provided by, and shall be subject to all requirements of, this Contract which pertain to the resolution of disputes and protests.
- J. Contractor Responsibility. Except as otherwise provided in this Section 10.03 for Differing Site Conditions, Contractor agrees to solely bear the risk of additional cost and Delay due to concealed or unknown conditions, surface or subsurface, at the Site or in Existing Improvements, without adjustment to the Contract Sum or Contract Time.

10.04 TRAFFIC REGULATION

- A. During the performance of the Work the Contractor shall erect and maintain necessary temporary fences, bridges, railings, lights, signals, barriers, or other safeguards as shall be appropriate under the circumstance in his/her judgment for the prevention of accidents; and he/she shall take other precautions as necessary for public safety including, but not limited to, traffic control. Traffic control shall be conducted in accordance with the latest edition of the Work Area Traffic Control ("WATCH") handbook, published by BNI Books, and as directed and approved by the City Traffic and Transportation Administrator.
- B. Contractor shall submit at least ten (10) Working Days prior to Work a detailed traffic control plan, that is approved by all agencies having jurisdiction and that conforms to all requirements of the Specifications.
- C. No changes or deviations from the approved detailed traffic control plan shall be made, except temporary changes in emergency situations, without prior approval of the City Traffic and Transportation Administrator and all agencies having jurisdiction.

Contractor shall immediately notify the Director, the City Traffic and Transportation Administrator and the agencies having jurisdiction of occurrences that necessitate modification of the approved traffic control plan.
- D. Contractor's failure to comply with this provision may result in actions as provided in Article 5: "Suspension or Termination of Contract" of these General Conditions.

10.05 TRAFFIC CONTROL DEVICES

- A. Traffic signs, flashing lights, barricades and other traffic safety devices used to control traffic shall conform to the requirements of the WATCH handbook or the manual of traffic control, whichever is more stringent, and as approved by the City Traffic and Transportation Administrator.
 - 1. Portable signals shall not be used unless permission is given in writing by the agency having jurisdiction.
 - 2. Warning signs used for nighttime conditions shall be reflectorized or illuminated. "Reflectorized signs" shall have a reflectorized background and shall conform to the current State of California Department of Transportation specification for reflective sheeting on highway signs.

10.06 EXECUTION

- A. The Contractor shall provide written notification to the Police Division, Traffic Bureau (818) 548-3130, at least two (2) weeks prior to the beginning of construction at any particular location. Notification will

include the specific location, project dates, what lanes of the roadway will be closed and when. Also the construction project manager's name and business phone number and the construction inspector's name and business phone number.

- B. The Contractor shall notify, by telephone, the Police Division Traffic Bureau (818) 548-3130 and Patrol Operations (818) 548-4890 at the completion of the posting of temporary no parking signs. Notification will include the times, dates and locations of the posting. When vehicles must be towed for violation of temporary no parking signs, the person who actually posted the signs, or on-view supervisor of that posting, will be present to answer pertinent questions that may be asked by the parking enforcement officer or police officer towing the vehicles.
- C. The Contractor shall notify the Glendale Fire Division, on a daily basis during the entire period that construction is in progress whenever roadways are reduced in width or blocked. Notification shall be made to the Fire Dispatch (818) 956-4800 and the Contractor shall provide the information required to identify which roadways would have accessibility problems due to his/her operations. The Contractor shall submit to Fire Division schedule of Work for their use and files.
- D. Roads subject to interference from the Work covered by this Contract shall be kept open, and the fences subject to interference shall be kept up by the Contractor until the Work is finished. Except where public roads have been approved for closure, traffic shall be permitted to pass through designated traffic lanes with as little inconvenience and delay as possible.
- E. Where alternating one-way traffic has been authorized, the maximum time that traffic will be delayed shall be posted at each end of the one-way traffic section. The maximum delay time shall be approved by the agency having jurisdiction.
- F. Contractor shall install temporary traffic markings where required to direct the flow of traffic and shall maintain the traffic markings for the duration of need. Contractor shall remove the markings by abrasive blasting when no longer required.
- G. Convenient access to driveways and buildings in the vicinity of Work shall be maintained as much as possible. Temporary approaches to, and crossing of, intersecting traffic lanes shall be provided and kept in good condition.
- H. When leaving a Work area and entering a roadway carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

10.07 FLAGGING

- A. Contractor shall provide flaggers to control traffic where required by the approved traffic control plan.
 - 1. Flaggers shall perform their duties and shall be provided with the necessary equipment in accordance with the current "Instructions to Flaggers" of the California Department of Transportation.
 - 2. Flaggers shall be employed full time on traffic control and shall have no other duties.

10.08 PEDESTRIAN CANOPIES OR BARRICADE PAYMENTS

Refer to City of Glendale Permit Services for requirements for building or access road safety improvements to be constructed during construction period. These devices or improvements deemed necessary, as part of permit application, will be included in Contractor's cost.

[END OF ARTICLE]

SAMPLE

ARTICLE 11 INDEMNITY

11.01 INDEMNITY

To the maximum extent permitted by law, the Contractor shall fully indemnify, hold harmless, protect, and defend the City, its officers, employees, agents, representatives and their successors and assigns ("Indemnitees") from and against any and all demands, liability, loss, suit, claim, action, cause of action, damage, cost, judgment, settlement, decree, arbitration award, stop notice, penalty, loss of revenue, and expense (including any fees of accountants, attorneys, experts or other professionals, and costs of investigation, mediation, arbitration, litigation and appeal), in law or in equity, of every kind and nature whatsoever, arising out of or in connection with, resulting from or related to, or claimed to be arising out of the Work performed by Contractor, or any of its officers, agents, employees, Subcontractors, Sub-Subcontractors, design consultants or any person for whose acts any of them may be liable, regardless of whether such claim, suit or demand is caused, or alleged to be caused, in part, by an Indemnatee, including but not limited to:

- A. Bodily injury, emotional injury, sickness or disease, or death to any persons;
- B. Infringement of any patent rights, licenses, copyrights or intellectual property which may be brought against the Contractor or City arising out of Contractor's Work, for which the Contractor is responsible;
- C. Stop notices and claims for labor performed or materials used or furnished to be used in the Work, including all incidental or consequential damages resulting to City from such stop notices and claims;
- D. Failure of Contractor or its Subcontractors to comply with the provisions for insurance;
- E. Failure to comply with any applicable law, statute, code, ordinance, regulation, permit, or order;
- F. Misrepresentation, misstatement, or omission with respect to any statement made in or any document furnished by the Contractor in connection therewith;
- G. Breach of any duty, obligation, or requirement under the Contract Documents;
- H. Failure to provide notice to any Party as required under the Contract Documents;
- I. Failure to protect the property of any utility provider or adjacent property owner; or
- J. Failure to make payment of all employee benefits.

This indemnity provision is effective regardless of any prior, concurrent, or subsequent active or passive negligence by Indemnitees, except that, to the limited extent mandated by California Civil Code Section 2782, the Contractor shall not be responsible for liabilities which arise from the sole negligence or willful misconduct of Indemnitees or arise from the active negligence of City.

11.02 ENFORCEMENT

Contractor's obligations under this Article extend to claims occurring after termination of the Contractor's performance of the Contract or Final Payment to Contractor. The obligations apply regardless of any actual or

alleged negligent act or omission of Indemnitees. Contractor, however, shall not be obligated under this Agreement to indemnify an Indemnitee for claims arising from the sole active negligence or willful misconduct of the Indemnitee or independent contractors who are directly responsible to Indemnitees. Contractor's obligations under this Article are in addition to any other rights or remedies which the Indemnitees may have under the law or under the Contract Documents. In the event of any claim, suit or demand made against any Indemnitees, the City may in its sole discretion reserve, retain or apply any monies due to the Contractor under the Contract for the purpose of resolving such claims; provided, however, that the City may release such funds if the Contractor provides the City with reasonable assurance of protection of the City's interests. The City shall in its sole discretion determine whether such assurances are reasonable.

11.03 NO LIMITATIONS

Contractor's indemnification and defense obligations set forth in this Article are separate and independent from the insurance provisions set forth in Article 12 herein; and do not limit, in any way, the applicability, scope, or obligations set forth in those insurance provisions. In claims, suits, or demands against any Indemnitee by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the Contractor's indemnification and defense obligations shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefits acts, or other employee benefits acts.

[END OF ARTICLE]

ARTICLE 12 INSURANCE

12.01 CONDITION TO COMMENCEMENT

Contractor shall not commence Work under this Contract until Contractor has obtained all insurance required hereunder from a company or companies acceptable to City, nor shall the Contractor allow any Subcontractor to commence Work on a subcontract until all insurance required of said Subcontractor has been obtained. Proof of insurance, in the form required by Exhibit 4, must be submitted by the Contractor prior to the City's execution of the Contract.

12.02 MINIMUM COVERAGE AND LIMITS

Contractor shall maintain the insurance coverage as set forth in Exhibit 4 throughout the term of the Contract.

12.03 CONDITIONS REGARDING INSURANCE COVERAGE AND LIMITS

City and Contractor agree as follows:

- A. All insurance coverage and limits provided pursuant to the Contract Documents shall apply to the full extent of the policies involved, available or applicable. Nothing contained in the Contract Documents or any other agreement relating to City or its operations limits the application of such insurance coverage.
- B. None of the policies required by this Contract shall be in compliance with these requirements if they include any limiting endorsement that has not been first submitted to City and approved in writing by the City Attorney or City's Risk Manager.

12.04 INSURANCE OBLIGATION IS SEPARATE FROM INDEMNITY OBLIGATION

This Agreement's insurance provisions:

- A. Are separate and independent from the indemnification and defense provisions in Article 12 of the Agreement; and
- B. Do not limit, in any way, the applicability, scope, or obligations of the indemnification and defense provisions in Article 12 of the Agreement.

[END OF ARTICLE]

ARTICLE 13 BONDS

13.01 REQUIRED BONDS

A. Contractor shall furnish the following bonds:

1. A Performance Bond in an amount equal to one hundred percent (100%) of the Contract price in the form shown in Exhibit "1" attached hereto.
2. A Payment Bond (Labor and Material) in an amount equal to one hundred percent (100%) of the total Contract price in the form shown in Exhibit "2" attached hereto.
3. [OPTIONAL:] A Maintenance Bond in an amount equal to ten percent (10%) of the total Contract price in the form shown in Exhibit "3" attached hereto.

13.02 POWER OF ATTORNEY

All bonds shall be accompanied by a power of attorney from the surety company authorizing the person executing the bond to sign on behalf of the company. If the bonds are executed outside the State of California, all copies of the bonds must be countersigned by a California representative of the surety. The signature of the person executing the bond shall be acknowledged by a Notary Public as the signature of the person designated in the power of attorney.

13.03 APPROVED SURETY

All the bonds shall be executed by a California admitted surety with an A.M. Best's Company rating satisfactory to the City. If an A.M. Best's rating is not available, the proposed surety must meet comparable standards of another rating service satisfactorily to City. Bonds issued by a California admitted surety listed in the latest versions of the U.S. Department of Treasury Circular 570 must be accompanied by all of the documents enumerated in California Code of Civil Procedure § 995.660(a).

13.04 REQUIRED PROVISIONS

Every bond must display the surety's bond number and incorporate the Contract for construction of the Work by reference. The terms of the bonds shall provide that the surety agrees that no change, extension of time, alteration, or modification of the Contract Documents or the Work to be performed thereunder shall in any way affect its obligations and shall waive notice of any such change, extension of time, alteration, or modification of the Contract Documents.

13.05 NEW OR ADDITIONAL SURETIES

If, during the continuance of the Contract, any of the sureties, in the opinion of the City, are or become non-responsible or otherwise unacceptable to City, City may require other new or additional sureties, which the Contractor shall furnish to the satisfaction of City within ten (10) days after notice, and in default thereof the Contract may be suspended and the materials may be purchased or the Work completed as provided in Article 5 herein.

13.06 WAIVER OF MODIFICATIONS AND ALTERATIONS

No modifications or alterations made in the Work to be performed under the Contract or the time of performance shall operate to release any surety from liability on any bond or bonds required to be given herein. Notice of such events shall be waived by the surety.

13.07 APPROVAL OF BONDS

The Contract will not be executed by City nor the Notice to Proceed issued until the required bonds have been received and approved by City. City's decision as to the acceptability of all sureties and bonds is final. No substitution of the form of the documents will be permitted without the prior written consent of City.

[END OF ARTICLE]

SAMPLE

ARTICLE 14 LABOR PROVISIONS

14.01 WORKING HOURS

- A. Work or activity of any kind shall be limited to the hours from 7:00 a.m. to 7:00 p.m. No construction noise shall be permitted between the hours of 7:00 p.m. and 7:00 a.m. of the next day as set forth in the Glendale Municipal Code.
- B. Work in excess of eight (8) hours per day, on Saturdays, Sundays, or on City holidays requires prior consent of the Director and is subject to Cost of Overtime Construction Inspection.
- C. Night, Sunday and Holiday Work:

No Work shall be performed at night, Sunday, or the ten (10) legal holidays to wit: New Year's Day, Martin Luther King, Jr. Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Friday following Thanksgiving Day, and Christmas Day, except Work pertaining to the public safety or with the permission of the Director, and accordance with such regulations as he/she shall furnish in writing. Before performing any Work at said times, except Work pertaining to the public safety, the Contractor shall give written notice to the Director so that proper inspection may be provided. "Night" as used in this paragraph shall be deemed to include the hours from 5:00 P.M. to 7:00 A.M. of the next succeeding day.

14.02 COST OF OVERTIME CONSTRUCTION INSPECTION

- A. Overtime construction Work performed at the option of, or for the convenience of, the Contractor will be inspected by the City at the expense of the Contractor. For any such overtime beyond the regular 8-hour day and for any time worked on Saturday, Sunday, or holidays the charges will be as shown in the following schedule:

	<u>Charge per Hour</u>
Associate Civil Engineer	\$
Civil Engineer	
Assistant Engineer	\$
Project Manager	\$
Construction Supervisor	\$
Senior Construction Inspector	\$
Assistant Inspector	\$
Construction Inspector	\$
Pickup Truck	\$

Other equipment as identified in Resolution No. 7373, Fees for Public Works permits, inspections, reviews and services for sewer connection fees.

- B. There will be no charges for the inspection of overtime Work ordered by the Director or required by the Contract Documents.

14.03 COMPLIANCE WITH STATE LABOR CODE

- A. Contractor shall comply with the provisions of the Labor Code of the State of California and any amendments thereof.

1. The time of service of any worker employed upon the Work shall be limited and restricted to eight (8) hours during any one-calendar day, and 40 hours during any one-calendar week.
2. Work performed by employees of the Contractor in excess of eight (8) hours per day, and 40 hours during any one calendar week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.
3. The Contractor and every subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by him/her in connection with the Work; the record shall be kept open at all reasonable hours to the inspection of the City and to the Division of Labor Standards Enforcement of the State of California.
4. In the event City deems Contractor is in violation of this Section 12.03, the Contractor shall, as a penalty, forfeit Fifty Dollars (\$50.00) for each worker employed in the execution of the Contract by the Contractor or by any subcontractor for each calendar day for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, a (one hundred dollar) \$100 penalty shall apply for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to cover underpaid wages. This subsection is effective to the extent it does not directly conflict with the overtime penalty provision of California Labor Code Section 558. In the event of such conflict, the California Labor Code governs over this section 14.03(A)(4).

14.04 WAGE RATES

A. Prevailing Wages

1. Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime Work in the locality in which the Work is to be performed, for each craft, classification, or type of worker needed to execute the Contract. A copy of the prevailing wage rate is on file and available for inspection by any interested party on request at the City Engineer's Office.
2. The Contractor shall post a copy of the general prevailing rate of per diem wages at the job site.
3. The Contractor and any subcontractor under him/her shall pay not less than the specified prevailing rate of wages to all workers employed in the execution of the Contract.
4. The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining Contract applicable to the particular craft, classification, or type of worker employed on the project.
5. The Contractor shall, as a penalty to the State or the City, forfeit not more than Fifty Dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for the Work or craft in which the worker is employed under the Contract by the Contractor or by any subcontractor under him. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which such worker was paid less than the stipulated prevailing wage

rate shall be paid to such worker by the Contractor.

6. The specified wage rates are minimum rates only and the City will not consider and shall not be liable for any claims for additional compensation made by the Contractor because of payment by him/her of any wage rate in excess of the general prevailing rates. All disputes in regard to the payment of wages in excess of those specified herein shall be adjusted by the Contractor at his/her own expense.

B. Payroll Records

1. The Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, Work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Work. The payroll records shall be certified and shall be available for inspection.
2. The Contractor shall inform the City of the location of the payroll records, including the street address, city and county, and shall, within five (5) Working Days, provide a notice of change in location and address. Compliance with payroll record requirements.
3. Upon request by the Director, the Contractor shall provide a copy of the certified payroll records along with a statement of compliance.

14.05 EMPLOYMENT OF APPRENTICES

- A. In the performance of this Contract, the Contractor and any subcontractor shall comply with the provisions concerning the employment of apprentices of the Labor Code of the State of California and any amendments thereof.
- B. In the event the Contractor or any subcontractor willfully fails to comply with the aforesaid section, such Contractor or subcontractor shall be subject to the penalties for noncompliance in the Labor Code of the State of California and any amendments thereof.

14.06 CHARACTER OF WORKERS

The Contractor shall not allow his/her agents or employees, subcontractors, or any agent or employee thereof, to trespass on premises or lands in the vicinity of the Work. Only skilled foremen and workers shall be employed on Work requiring special qualifications, and when required by the Director, the Contractor shall discharge any person who commits trespass, or in the opinion of the Director, acts in a disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable manner. Any employee being intoxicated or bringing or having intoxicating liquors or controlled substances on the Work shall be discharged. Such discharge shall not be the basis of any claim for compensation of damages against the City or any of its officers, agents, and employees.

[END OF ARTICLE]

ARTICLE 15 DISPUTE RESOLUTION

15.01 SUBMISSION OF CLAIMS

A. By Contractor

Contractor's right to commence the Claims Dispute Resolution Process shall arise upon the Director's written response denying all or part of a Claim. Contractor shall submit a written Statement of Dispute to the Director within seven (7) Days after the Director rejects all or a portion of Contractor's Claim. Contractor's Statement of Dispute shall be signed under penalty of perjury and shall state with specificity the events or circumstances giving rise to the Claim, the dates of their occurrence and the effect, if any, on the compensation due or performance obligations of Contractor under the Construction Contract. Such Statement of Dispute shall include adequate supporting data to substantiate the disputed Claim. Adequate supporting data for a Claim relating to the adjustment of the Contractor's obligations relative to time of performance shall include a detailed, event-by-event description of the impact of each delay on Contractor's time for performance. Adequate supporting data to a Statement of Dispute submitted by Contractor involving Contractor's compensation shall include a detailed cost breakdown and supporting cost data in such form and including such detailed information and other supporting data as required to demonstrate the grounds for, and precise amount of, the Claim.

B. By City

City's right to commence the Claims Dispute Resolution Process shall arise at any time following the City's actual discovery of the circumstances giving rise to the Claim. Nothing contained herein shall preclude City from asserting Claims in response to a Claim asserted by Contractor. A Statement of Dispute submitted by City shall state the events or circumstances giving rise to the Claim, the dates of their occurrence and the damages or other relief claimed by City as a result of such events.

C. Claims defined

The term "claims" as used herein shall be as defined in California Public Contract Code § 20104(b) (2).

15.02 CLAIMS DISPUTE RESOLUTION PROCESS

The parties shall utilize each of the following steps in the Claims Dispute Resolution Process in the sequence they appear below. Each party shall participate fully and in good faith in each step in the Claims Dispute Resolution Process, which good faith effort shall be a condition precedent to the right of each party to proceed to the next step in the Claims Dispute Resolution Process.

A. Direct Negotiations

Designated representatives of City and Contractor shall meet as soon as possible (but not later than ten (10) Days after receipt of the Statement of Dispute) in a good faith effort to negotiate a resolution to the Claim. Each party shall be represented in such negotiations by an authorized representative with full knowledge of the details of the Claim or defenses being asserted by such party, and with full authority to resolve such Claim then and there, subject only to City's right and obligation to obtain City Council [or other City official] approval of any agreed settlement or resolution. In the Claim involves

the assertion of a right or claim by a Subcontractor against Contractor that is in turn being asserted by Contractor against City, then such Subcontractor shall also have a representative attend such negotiations, with the same authority and knowledge as just described. Upon completion of the meeting, if the Claim is not resolved, the parties may either continue the negotiations or either party may declare negotiations ended. All discussions that occur during such negotiations and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

B. Deferral of Claims

Following the completion of the negotiations required by Section 15.02 A., all unresolved Claims, except those that do not involve parties other than the Contractor and City, shall be deferred pending Final Completion of the Work, subject to City's right, in its sole and absolute discretion, to require that the claims Dispute Resolution Process proceed prior to Final Completion. In the event that City does not elect to proceed with the Claims Dispute Resolution Process prior to Final Completion of the Work, all Claims that have been deferred until such Final Completion shall be consolidated within a reasonable time after such Final Completion and thereafter pursued to resolution pursuant to the Claims Dispute Resolution Process. Nothing contained in this Article 15 shall be interpreted as limiting the parties' rights to continue informal negotiations of Claims that have been deferred until such Final Completion; provided, however, that such informal negotiations shall not be interpreted as altering the provisions of this Article 15 deferring final determination and resolution of unresolved Claims until after Final Completion of the Work.

C. Legal Proceedings

If the Claim is not resolved by direct negotiations then the party wishing to further pursue resolution or determination of the Claim shall submit the Claim for determination by commencing legal proceedings in a court of competent jurisdiction.

15.03 NO WAIVER

Participation in the Claims Dispute Resolution Process shall not constitute a waiver, release or compromise of any defense of either party, including, without limitation, any defense based on the assertion that the rights of Contractor that are the basis of a Claim were previously waived by Contractor due to failure to comply with the Contract Documents, including, without limitation, Contractor's failure to comply with any time periods for providing notices or for submission or supporting documentation of Claims.

[END OF ARTICLE]

ARTICLE 16 ACCOUNTING RECORDS

16.01 MAINTENANCE OF RECORDS

Contractor shall keep, and shall include in its contracts with its Subcontractors, provisions requiring its Subcontractors to keep full and detailed books and records in accordance with the requirements of the Contract Documents, including the following: all information, materials and data of every kind and character (hard copy, as well as computer readable data if it exists), that have any bearing on or pertain to any matters, rights, duties or obligations relating to the Project or the performance of the Work, including, without limitation, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, change orders, change order requests, estimates, field orders, schedules, diaries, logs, reports, shop drawings, samples, exemplars, drawings, specifications, invoices, delivery tickets, receipts, vouchers, cancelled checks, memoranda; accounting records; job cost reports; job cost files (including complete documentation covering negotiated settlements); backcharge; general ledgers; documentation of cash and trade discounts earned; insurance rebates and dividends, and other documents relating in way to Claims or Change Orders, Unilateral Change Orders, Field Orders or other charges or time extensions related to the Project asserted by Contractor or any Subcontractor. Contractor shall exercise such controls as may be necessary for proper financial management of the Work. Such accounting and control systems shall comply with prevailing custom and practice for similar projects, be satisfactory to City and shall include preservation of such records for a period of five (5) years after approval of the Notice of Completion and Acceptance by City, or for such longer period as may be required by applicable laws.

16.02 ACCESS TO RECORDS

Contractor shall allow, and shall include in its contracts with its Subcontractors provisions requiring its Subcontractors to allow, City and its authorized representative(s), auditors, attorneys and accountants, upon twenty-four (24) hours notice to Contractor, full access to inspect and copy all books and records relating to the Project that Contractor is required to maintain pursuant to Section 16.01, above.

16.03 CONTRACTOR NONCOMPLIANCE, WITHHOLDING

Contractor's compliance with Sections 16.01 and 16.02, above, shall be a condition precedent to maintenance of any legal action or arbitration by Contractor against City. In addition to and without limitation upon City's other rights and remedies for breach, including any other provisions for withholding set forth in the Contract Documents, City shall have the right, exercised in its sole discretion, to withhold from any payment to Contractor due under a current Application for Payment an additional sum of up to ten percent (10%) of the total amount set forth in such Application for Payment, until Contractor and its Subcontractors have complied with any outstanding and unsatisfied request by City under this Article 16. Upon such compliance with this Article 16, any additional monies withheld pursuant to this Section 16.03 shall be released to Contractor.

16.04 SPECIFIC ENFORCEMENT BY CITY

Contractor agrees that any failure by Contractor or any Subcontractor to provide access to its books and records as required by this Article 16 shall be specifically enforceable, by issuance of a preliminary and/or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court and without the necessity of oral testimony, to compel Contractor to permit access, inspection, audit

and/or reproduction of such books and records or to require delivery of such books and records to City for inspection, audit and/or reproduction.

[END OF ARTICLE]

SAMPLE

ARTICLE 17 MISCELLANEOUS PROVISIONS

17.01 COMPLIANCE WITH APPLICABLE LAWS

A. Notices, Compliance

Contractor shall give all notices required by governmental authorities and comply with all applicable laws and lawful orders of governmental authorities, including but not limited to the provisions of the California Code of Regulations applicable to contractors performing construction and all laws, ordinances, rules, regulations and lawful orders relating to safety, prevailing wage and equal employment opportunities.

B. Taxes, Employee Benefits

Contractor shall pay at its own expense, at no cost to the City and without adjustment to the Contract Sum, all local, state and federal taxes, including, without limitation all sales, consumer, business license, use and similar taxes on materials, labor or other items furnished for the Work or portions thereof provided by Contractor or Subcontractors, all taxes arising out of its operations under the Contract Documents and all benefits, insurance, taxes and contributions for social security and unemployment insurance which are measured by wages, salaries or other remuneration paid to Contractor's employees. If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to meat for its exclusive use, then City, upon request, will execute documents necessary to show that is a political subdivision of the State for the purposes of such exemption and that the sale is for the exclusive use of the City, in which case no excise tax for such materials shall be included in the Bid or Contract Sum.

C. Notice of Violations

Contractor shall immediately notify the City and Director in writing of any instruction received from the City, Director, Architect or other person or entity that, if implemented, would cause a violation of any applicable law or lawful order of a governmental authority. If Contractor fails to provide such notice, then Director and Architect shall be entitled to assume that such instruction is in compliance with applicable laws and lawful orders of governmental authorities. If Contractor observes that any portion of the Drawings and Specifications or Work are at variance with applicable laws or lawful orders of governmental authorities, or should Contractor become aware of conditions not covered by the Contract Documents which will result in Work being at variance therewith, Contractor shall promptly notify Director in writing. If, without such notice to Director, Contractor or any Subcontractor performs any Work which it knew, or through the exercise of reasonable care should have known, was contrary to lawful orders of governmental authorities or applicable laws, then Contractor shall bear all resulting losses at its own expense, at no cost to City and without adjustment to the Contract Sum.

17.02 OWNERSHIP OF DESIGN DOCUMENTS

A. Property of City

All Design Documents, Contract Documents and Submittals (including, without limitation, all copies thereof) and all designs and building designs depicted therein are and shall remain the sole and

exclusive property of the City and the City shall solely and exclusively hold all copyrights thereto. Without derogation the City's rights under this Section, the Contractor and Subcontractors are granted a limited, non-exclusive license, revocable at will of City, to use and reproduce applicable portions of the Contract Documents and Submittals as appropriate to and for use in the execution of the Work and for no other purpose.

B. Documents on Site

Contractor shall keep on the Project site, at all times and for use by City, Director, Inspectors of Record and City's Consultants, a complete set of the Contract Documents that have been approved by applicable Governmental Authorities.

C. Delivery to City

All Design Documents, Contract Documents and Submittals in the possession of Contractor or Subcontractors shall be returned to the City upon the earlier of Final Completion or termination of the Construction Contract; provided, however, that Contractor and each Subcontractor shall have the right to retain one (1) copy of the Contract Documents and Submittals for its permanent records

D. Subcontractors

Contractor shall take all necessary steps to assure that a provision is included in all subcontracts with Subcontractors, of every tier, who perform Work on the Project establishing, protecting and preserving the, City's rights set forth in this Section.

17.03 AMENDMENTS

The Contract Documents may be amended only by a written instrument duly executed by the parties or their respective successors or assigns.

17.04 WAIVER

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future disputes.

17.05 INDEPENDENT CONTRACTOR

Contractor is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with City other than that of Project owner and independent contractor. In no event shall the relationship between City and Contractor be construed as creating any relationship whatsoever between City and Contractor's employees. Neither Contractor nor any of its employees is or shall be deemed to be an employee of City. Except as otherwise specified in the Contract Documents, Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that Contractor or any Subcontractor hires to perform or assist in performing the Work.

17.06 SUCCESSORS AND ASSIGNS

The Contract Documents shall be binding upon and inure to the benefit of City and Contractor and their permitted successors, assigns and legal representatives.

- A. City may assign all or part of its right, title and interest in and to any Contract Documents, including rights with respect to the Payment and Performance Bonds, to (a) any other governmental person as permitted by governmental rules, provided that the successor or assignee has assumed all of City's obligations, duties and liabilities under the Contract Document then in effect; and (b) any other Person with the prior written approval of Contractor.
- B. Contractor may collaterally assign its rights to receive payment under the Contract Documents. Contractor may not delegate any of its duties hereunder, except to Subcontractors as expressly otherwise permitted in the Contract Documents. Contractor's assignment or delegation of any of its Work under the Contract Documents shall be ineffective to relieve Contractor of its responsibility for the Work assigned or delegated, unless City, in its sole discretion, has approved such relief from responsibility.

Any assignment of money shall be subject to all proper set-offs and withholdings in favor of City and to all deductions provided for in the Contract. All money withheld, whether assigned or not, shall be subject to being used by City for completion of the Work, should Contractor be in default.

- C. Except for the limited circumstances set forth in Section 17.06-B, above, Contractor may not, without the prior written consent of City in its sole discretion, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under the Contract Documents. No partner, joint venturer, member or shareholder of Contractor may assign, convey, transfer, pledge, mortgage or otherwise encumber its ownership interest in Contractor without the prior written consent of City, in City's sole discretion.

17.07 SURVIVAL

Contractor's representations and warranties, the dispute resolution provisions contained in Article 15, and all other provisions which by their inherent character should survive termination of the Contract and/or Final Acceptance, shall survive the termination of the Contract and the Final Acceptance Date.

17.08 LIMITATION ON THIRD PARTY BENEFICIARIES

It is not intended by any of the provisions of the Contract Documents to create any third party beneficiary hereunder or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. The duties, obligations and responsibilities of the parties to the Contract Documents with respect to such third parties shall remain as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between City and a Subcontractor or any other Person except Contractor.

17.09 PERSONAL LIABILITY OF CITY EMPLOYEES

City's authorized representatives are acting solely as agents and representatives of City when carrying out the provisions of or exercising the power or authority granted to them under the Contract. They shall not be liable either personally or as employees of City for actions in their ordinary course of employment.

No agent, consultant, Council member, officer or authorized employee of City, shall be personally responsible for any liability arising under the Contract.

17.10 NO ESTOPPEL

City shall not, nor shall any officer thereof, be precluded or estopped by any measurement, estimate or certificate made or given by the City representative or other officer, agent, or employee of City under any provisions of the Contract from at any time (either before or after the final completion and acceptance of the Work and payment therefor) pursuant to any such measurement, estimate or certificate showing the true and correct amount and character of the work done, and materials furnished by Contractor or any person under the Contract or from showing at any time that any such measurement, estimate or certificate is untrue and incorrect, or improperly made in any particular, or that the work and materials, or any part thereof, do not in fact conform to the Contract Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, City shall not be precluded or estopped from recovering from Contractor and its Sureties such damages as City may sustain by reason of Contractor's failure to comply or to have complied with the Contract Documents.

17.11 GOVERNING LAW

The Contract Documents shall be governed by and construed in accordance with the law of the State of California, without regard to conflict of law principles.

17.12 FURTHER ASSURANCES

Contractor shall promptly execute and deliver to City all such instruments and other documents and assurances as are reasonably requested by City to further evidence the obligations of Contractor hereunder, including assurances regarding assignments of Subcontractors contained herein.

17.13 SEVERABILITY

If any clause, provision, section or part of the Contract is ruled invalid by a court having proper jurisdiction, then the parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the Contract Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the Contract, which shall be construed and enforced as if the Contract did not contain such invalid or unenforceable clause, provision, section or part.

17.14 HEADINGS

The captions of the sections of the Contract are for convenience only and shall not be deemed part of the Contract or considered in construing the Contract.

17.15 ENTIRE AGREEMENT

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subject matter.

17.16 COUNTERPARTS

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[END OF ARTICLE]

SAMPLE

EXHIBIT 1

Performance Bond No. _____

PERFORMANCE BOND

WHEREAS, the City of Glendale ("City") has awarded to _____ designated as the "Principal"
(contractor)

herein, a contract for the work described as follows:

WHEREAS, on or about _____, 20__, the Principal entered into a Contract with the City for the construction of the work of improvement, which Contract and all Contract Documents set forth therein are incorporated herein and made a part hereof by this reference;

WHEREAS, Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents concurrently with delivery to City of the executed Contract.

NOW, THEREFORE, Principal and _____ ("Surety"), a duly admitted surety in the State of California, are held and firmly bound to the City for payment of the penal sum of \$ _____ ("the Bonded Sum"), in lawful money of the United States, for payment of which sum Principal and Surety jointly and severally bind themselves and their heirs, executors, administrators, successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, than this obligation shall be null and void; otherwise it shall remain in full force and effect.

The following terms and conditions shall apply with respect to this Bond:

1. This bond specifically guarantees the performance of each of every obligation of Principal under the Contract Documents, as they may be amended and supplemented, including but not limited to its liability for liquidated damages and warranties as specified in the Contract Documents, but not-to-exceed the Bonded Sum.
2. The guarantees contained herein shall survive the final completion of the construction called for in the Contract Documents with respect to those obligations of Principal which survive such final completion.
3. No alteration, modification or supplement to the Contract Documents or the nature of the Work performed thereunder, including without limitation, any extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety hereby waives any notice of alteration, modification, supplement or extension of time.
4. Whenever Principal shall be, and is declared by City to be, in default under the Contract Documents, provided that City is not then in material default thereunder, Surety shall promptly: (a) remedy such default; (b) complete the Project in accordance with the terms and conditions of the Contract Documents then in effect; or (c) select a contractor(s) to complete all Work for which a Notice to Proceed has been issued in accordance with the terms and conditions of the Contract Documents then in effect, using a procurement methodology approved by City, arrange for a contract between such contractor(s) and City, and make available, as Work progresses, sufficient funds to pay the cost of completion, unless the balance of the Contract price, including other costs and damages for which the Surety is liable hereunder, but not exceeding the Bonded Sum.
5. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

6. No right of action shall accrue on this Bond to or for the use of any entity other than City or its successors and assigns.
7. In the event any suit, action or proceeding is instituted to recover on the Bond, said Surety will pay, and does hereby agree to pay, City's reasonable attorneys' fees and costs incurred, with or without suit, in addition to the Bonded Sum.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body. Principal and Surety have caused this Bond to be duly executed and delivered as of this ____ day of _____, 20__.

Surety

By: _____

Principal

By: _____
(Signature)

Attorney-in-Fact

(Printed Name)

(Signature)

Its: _____
(Title)

(Attach Attorney-in-Fact Certificate, Corporate Seal and Surety Seal)

APPROVED AS TO SURETY AND
PRINCIPAL AMOUNT

APPROVED AS TO FORM:

By: _____
City Engineer

By: _____
City Attorney

Note: This bond must be executed in triplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.

EXHIBIT 2

Payment Bond No. _____

PAYMENT BOND (Labor and Material Bond)

WHEREAS, City of Glendale ("City") has awarded to _____ designated as the "Principal" herein, a
(contractor)
contract for the work described as follows:

WHEREAS, on or about _____, 20__, the Principal entered into a Contract with the City for the construction of the work of improvement, which Contract and all Contract Documents set forth therein are incorporated herein and made a part hereof by this reference;

WHEREAS, by terms of the Contract, as well as California Civil Code § 3247,

Principal is required to furnish a bond guaranteeing payment of claims.

NOW, THEREFORE, Principal and _____ ("Surety"), a duly admitted surety in the State of California, are held and firmly bound to the City for payment of the penal sum of \$ _____ ("the Bonded Sum"), in lawful money of the United States, for payment of which sum Principal and Surety jointly and severally bind themselves and their heirs, executors, administrators, successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if Principal shall fail to pay any of the persons named in Civil Code § 3181 for all labor, materials, equipment or services used or reasonably required for use in performance of the Work of the Project, then Surety shall pay for the same in an amount not-to-exceed the Bonded Sum, otherwise this obligation shall be null and void.

The following terms and conditions shall apply with respect to this Bond:

1. In case suit is brought upon this bond, the said Surety will pay reasonable attorney's fees and costs incurred by City, to be fixed by the Court in addition to bonded sum;
2. No alteration, modification or supplement to the Contract Documents or the nature of the Work to be performed thereunder, including without limitation, any extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety hereby waives notice of any alteration, modification, supplement or extension of time.
3. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

4. This bond shall inure to the benefit of any of the persons named in California Civil Code § 3181 as to give a right of action to such persons or their assigns in any suit brought upon this Bond.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body. Principal and Surety have caused this Bond to be duly executed and delivered as of this ____ day of _____, 20__.

_____ Surety	_____ Principal
By: _____	By: _____ (Signature)
_____ Attorney-in-Fact	_____ (Printed Name)
_____ (Signature)	Its: _____ (Title)

(Attach Attorney-in-Fact Certificate, Corporate Seal and Surety Seal)

APPROVED AS TO SURETY AND
PRINCIPAL AMOUNT

APPROVED AS TO FORM:

By: _____
City Engineer

By: _____
City Attorney

Note: This bond must be executed in triplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.

EXHIBIT 3

MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, City of Glendale, State of California, and _____, (hereinafter designated as "Principal") have entered into an agreement for the furnishing of all materials, labor, services and transportation, necessary, convenient, and proper to construct the Project: _____, which said Agreement dated _____, 200__, and all of the Contract Documents attached to or forming a part of said Agreement, are hereby referred to and made a part hereof; and

WHEREAS, pursuant to law, the Principal is required after completion of the Work, and before the filing and recordation of a Notice of Completion for the Work, to file a good and sufficient bond with the body by whom the Contract is awarded, to secure claims for Maintenance equal to five percent (5%) of the total amount the Contract which shall hold good for a period of one (1) year from the date the City's Notice of Completion and Acceptance is filed with the County Recorder, to protect the City against the result of faulty material or workmanship during that time.

NOW, THEREFORE, said Principal and the undersigned _____ as corporate surety, are held and firmly bound unto the City of Glendale, for repair or replacement of any and all of our Work together with any other adjacent Work which may be displaced by so doing, that proves to be defective in its workmanship or material for the period of one (1) year (except when otherwise required in the Contract to be for a longer period) from the date the City's Notice of Completion and Acceptance, or equivalent is filed with the County Recorder, ordinary wear and tear and unusual abuse or neglect excepted. Said date of acceptance shall be as defined in Article 3.06 of the General Conditions of these Contract Documents, in the sum of: _____ Dollars (\$_____), lawful money of the United States, for the payment of which sum well and truly made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally by these presents.

The condition of this obligation is such that if the said Principal or any of his or her or its subcontractors, or the heirs, executors, administrators, successors, or assigns or assigns of any, all, or either of them, shall fail to execute within a reasonable amount of time, or fail to respond within seven (7) days with a written schedule acceptable to the City for same, repair or replacement of any and all Work, together with any other adjacent Work which may be displaced by so doing, that proves to be defective in its workmanship or material for the period of one (1) year (except when otherwise required in the Contract to be for a longer period) from the date the City's Notice of Completion and Acceptance is filed with the County Recorder, ordinary wear and tear and unusual abuse or neglect excepted with respect to such Work and labor, the surety herein shall pay for the same, in an amount not exceeding the sum specified in this Bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the said surety will pay a reasonable attorney's fee to be fixed by the court.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force, virtue, and effect.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of said Contract or to the Work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Death of the Principal shall not relieve Surety of its obligations hereunder.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body. This document has been duly executed by Principal and Surety above named on the ____ day of _____, 20____.

_____ Surety	_____ Principal
By: _____	By: _____ (Signature)
_____ Attorney-in-Fact	_____ (Printed Name)
_____ (Signature)	Its: _____ (Title)

(Attach Attorney-in-Fact Certificate, Corporate Seal and Surety Seal)

APPROVED AS TO SURETY AND
PRINCIPAL AMOUNT

APPROVED AS TO FORM:

By: _____
City Engineer

By: _____
City Attorney

Note: This bond must be executed in triplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.

EXHIBIT 4

INSURANCE REQUIREMENTS

1.0 REQUIRED INSURANCE POLICIES

At its own expense, CONTRACTOR shall obtain, pay for, and maintain – and shall require each of its Subcontractors to obtain and maintain – for the duration of the Agreement, policies of insurance meeting the following requirements:

A. Workers' Compensation/Employer's Liability Insurance shall provide workers' compensation statutory benefits as required by law.

1. Employer's Liability insurance shall be in an amount not less than:
 - (a) [TBD] MILLION DOLLARS (\$ [TBD,000,000]) per accident for bodily injury or disease;
 - (b) [TBD], MILLION DOLLARS (\$[TBD,000,000]) per employee for bodily injury or disease; and
 - (c) [TBD MILLION DOLLARS (\$[TBD,000,000]) policy limit.

B. Commercial General Liability ("CGL") (primary). City and its employees and agents shall be added as additional insureds, not limiting coverage for the additional insured to "ongoing operations" or in any way excluding coverage for completed operations. Coverage shall apply on a primary, non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any employee, representative or agent of City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall contain no contractors' limitation or other endorsement limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

1. CGL insurance must not be written for less than the limits of liability specified as follows:
 - (a) [TBD MILLION DOLLARS (\$[TBD,000,000]) per occurrence for bodily injury (including accidental death) to any one person;
 - (b) [TBD MILLION DOLLARS (\$[TBD,000,000]) per occurrence for personal and advertising injury to any one person;
 - (c) [TBD MILLION DOLLARS (\$[TBD,000,000]) per occurrence for property damage; and
 - (d) [TBD MILLION DOLLARS (\$[TBD,000,000]) general aggregate limit.
2. CGL insurance must include all major divisions of coverage and must cover:
 - (a) Premises Operations (including Explosion, Collapse, and Underground ["X,C,U"] coverages as applicable);
 - (b) Independent Contractor's Protective;
 - (c) Independent Contractors;

- (d) Products and Completed Operations
- (e) Personal and Advertising Injury (with Employer's Liability Exclusion deleted);
- (f) Contractual Liability; and
- (g) Broad Form Property Damage.

3. Umbrella or Excess Liability Insurance (over primary), if provided, shall be at least as broad as any underlying coverage. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion and no contractor's limitation endorsement. The policy shall have starting and ending dates concurrent with the underlying coverages. The Named Insured may determine the layering of primary and excess liability insurance provided that if such layering differs from that described here, the actual coverage program meets the minimum total required limits and complies with all other requirements listed here.

C. Business Automobile Liability Insurance

1. Business Automobile Liability Insurance must cover all vehicles, whether rented, leased, hired, scheduled, owned or non-owned. If Contractor does not own any vehicles, this requirement may be satisfied by a non-owned vehicle endorsement to the general and umbrella liability policies. Business Automobile Liability Insurance coverage amounts shall not be less than the following:

- (a) TBD MILLION DOLLARS (\$TBD,000,000) per occurrence for bodily injury (including accidental death) to any one person; and
 - (b) TBD MILLION DOLLARS (\$TBD,000,000) per occurrence for property damage;
- or
- (c) TBD MILLION DOLLARS (\$TBD,000,000) combined single limit .

D. Contractors Pollution Liability Insurance (CPL) [OPTIONAL AT DISCRETION OF CITY]

1. Contractors Pollution Liability insurance shall provide coverage for liability caused by pollution conditions arising out of the operations of the Contractor. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using Subcontractors, the policy must include work performed "by or on behalf" of the insured.

2. The policy limit shall provide coverage of no less than _____ million dollars (\$____,000,000) per claim and in the aggregate. Coverage shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and costs of defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

3. All activities contemplated in the Contract shall be specifically scheduled on the CPL policy as "covered operations." In addition, the policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites.

4. The policy shall specifically provide for a duty to defend on the part of the insurer. City, its officers, employees and agents shall be added to the policy as additional insureds by endorsement.

E. Builder's Risk Insurance [OPTIONAL AT DISCRETION OF CITY]

1. Builder's Risk Insurance covering all real and personal property for "all risks" of loss or "comprehensive perils" coverage including but not limited to the perils of earth movement including earthquake and flood for all buildings, structures, fixtures, materials, supplies, machinery and equipment to be used in or incidental to the construction at the site, off site, or in transit, for the full replacement value of such properties. Coverage shall be included for property of others in the care, custody or control of the insured for which any insured may be liable. At its sole discretion, City may purchase a builder's risk policy for the Project instead of a contractor purchased policy, in which case the Contract Price shall be reduced.

2.0 GENERAL REQUIREMENTS—ALL POLICIES

A. Qualifications of Insurer. At all times during the term of this Contract, Contractor's insurance company must meet all of the following requirements:

1. "Admitted" insurer by the State of California Department of Insurance or be listed on the California Department of Insurance's "List of Surplus Line Insurers" ("LESLI");

2. Domiciled within, and organized under the laws of, a State of the United States; and

3. Carry an A.M. Best & Company minimum rating of "A:VII".

B. Continuation Coverage. For insurance coverages that are required to remain in force after the Final Payment, and if reasonably available, Contractor shall submit to City, with the final Application for Payment, all certificates and additional insured endorsements evidencing the continuation of such coverage.

C. Deductibles or Self-Insured Retentions. All deductibles or self-insured retentions are subject to City's review and approval, in its sole discretion.

D. Commercial General Liability and Business Automobile Insurance policies must be written on an "occurrence" basis and must add the City of Glendale and its officers, agents, employees and representatives as additional insureds.

E. Contractor's Insurance Primary. Other insurance (whether primary, excess, contingent or self-insurance, or any other basis) available to City, or its representatives, or both, is excess over Contractor's insurance. City's insurance, or self-insurance, or both, will not contribute with Contractor's insurance policy.

F. Waiver of Subrogation. Contractor and Contractor's insurance company waive— and shall not exercise— any right of recovery or subrogation that Contractor or the insurer may have against City, or its representatives, or both.

G. Separation of Insureds. Contractor's insurance policy applies separately to each insured or additional insured who is seeking coverage, or against whom a claim is made or suit is brought, except that the naming of multiple insureds will not increase an insurance company's limits of liability.

H. Claims by Other Insureds. Contractor's insurance policy applies to a claim or suit brought by an additional insured against a Named Insured or other insured, arising out of bodily injury, personal injury, advertising injury, or property damage.

I. Premiums. City is not liable for a premium payment or another expense under Contractor's policy

J. At any time during the duration of this Contract, City may do any one or more of the following:

1. Review this Agreement's insurance coverage requirements;

2. Require that Contractor obtain, pay for, and maintain more insurance depending on City's assessment of any one or more of the following factors:

(a) City's risk of liability or exposure arising out of, or in any way connected with, the services of Contractor under this Agreement;

(b) The nature or number of accidents, claims, or lawsuits arising out of, or in any way connected with, the services of Contractor under this Agreement; or

(c) The availability, or affordability, or both, of increased liability insurance coverage.

3. Obtain, pay for, or maintain a bond (as a replacement for an insurance coverage) from a California corporate surety, guaranteeing payment to City for liability, or costs, or both, that City incurs during City's investigation, administration, or defense of a claim or a suit arising out of this Agreement; or

K. Contractor shall maintain the insurance policy without interruption, from the Project's commencement date to the Final Payment date, or until a date that City specifies for any coverage that Contractor must maintain after the Final Payment.

L. Contractor shall not allow any insurance to expire, cancel, terminate, lapse, or non-renew. Contractor's insurance company shall mail City written notice at least thirty (30) days in advance of the policy's cancellation, termination, non-renewal, or reduction in coverage and ten (10) days before its insurance policy's expiration, cancellation, termination, or non-renewal, Contractor shall deliver to City evidence of the required coverage as proof that Contractor's insurance policy has been renewed or replaced with another insurance policy which, during the duration of this Agreement, meets all of this Agreement's insurance requirements.

M. At any time, upon City's request, Contractor shall furnish satisfactory proof of each type of insurance coverage required— including a certified copy of the insurance policy or policies; certificates, endorsements, renewals, or replacements; and documents comprising Contractor's self-insurance program— all in a form and content acceptable to the City Attorney or City's Risk Manager.

N. If Contractor hires, employs, or uses one or more Subcontractor(s) to perform work, services, operations, or activities on Contractor's behalf, Contractor shall ensure that the Subcontractor complies with the following.

1. Meets, and fully complies with, this Agreement's insurance requirements; and
2. Furnishes City at any time upon its request, with a complete copy of the Subcontractor's insurance policy or policies for City's review, or approval, or both. Failure of City to request copies of such documents shall not impose any liability on City, or its employees.

O. Contractor's failure to comply with an insurance provision in this Agreement constitutes a material breach upon which City may immediately terminate or suspend Contractor's performance of this Agreement, or invoke another remedy that this Agreement or the law allows. At its discretion and without waiving any other rights it may have pursuant to law, City has the right but not a duty to obtain or renew the insurance and pay all or part of the premiums. Upon demand, Contractor shall repay City for all sums or monies that City paid to obtain, renew, or reinstate the insurance, or City may offset the cost of the premium against any sums or monies that City may owe Contractor.

3.0 CONTRACTOR'S SUBMITTAL OF CERTIFICATES AND ENDORSEMENTS

A. Contractor shall have its insurance carrier(s) or self-insurance administrator(s) complete and execute the following insurance documents and shall deliver said documents at the same time Contractor delivers this Agreement to City. City will neither sign this Agreement nor issue a "Notice to Proceed" until the City Attorney or City's Risk Manager has reviewed and approved all insurance documents. City's decision as to the acceptability of all insurance documents is final. Sample insurance documents in the City's approved format are set forth in this Exhibit 4.

B. Required Submittals for Commercial General Liability, Business Automobile Insurance and Contractor's Pollution Liability Insurance. The following submittals must be on forms satisfactory to the City Attorney or City's Risk Manager, and signed by the insurance carrier or its authorized representative – which fully meet the requirements of, and contain provisions entirely consistent with, all of the insurance requirements set forth herein.

1. "Certificate of Insurance;"
2. "Additional Insured Endorsement;"
3. Subrogation Endorsement: "Waiver of Transfer to Rights of Recover Against Others"

Both Certificates Of Insurance and Additional Insured Endorsements must read as follows: "The City of Glendale, and its officers, agents, employees and representatives are included as additional insureds under the policy(s). This insurance is primary to all other insurance of the City. The City's insurance and self-insurance will apply in excess of, and will not contribute with this insurance. This insurance applies separately to each insured or additional insured who is seeking coverage, or against whom a claim is made or a suit is brought. The issuing company shall mail thirty (30) days advance notice to the City for any policy cancellation, termination, non-renewal, or reduction in coverage."

C. Required Submittals for Workers' Compensation Insurance. Contractor shall provide City with a certificate of insurance and a subrogation endorsement on forms satisfactory to the City Attorney or City's Risk Manager, and signed by the insurance carrier or its authorized representative – which fully meet the requirements of, and contain provisions entirely consistent with, this Contract's workers compensation insurance requirements. If Contractor is self-insured for workers' compensation, a copy of the "Certificate of Consent to Self-insure" from the State of California; or if Contractor is lawfully exempt from workers' compensation laws, an "Affirmation of Exemption from Labor Code §3700" form.

D. Required Evidence of Builder's Risk Coverage. Contractor shall provide City with a certificate of insurance and a declarations page on the on a form satisfactory to the City Attorney or City's Risk Manager, and signed by the insurance carrier or its authorized representative. The policy terms must fully meet the requirements of, and contain provisions entirely consistent with, all of the insurance requirements set forth herein. The City shall be named as a loss payee on the insurance policy for the full replacement value of all buildings, structures, fixtures and materials to be constructed, maintained, repaired or supplied pursuant to this Contract.

E. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that all required coverage is provided. Contractor agrees to obtain certificates evidencing such coverage.

F. Contractor agrees to provide immediate notice to City of any claim or loss against Contractor that includes City or any other indemnitee as a defendant. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

G. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

H. Any "self-insured retention" must be declared and approved by City. City reserves the right to require the self-insured retention to be eliminated or replaced by a deductible. Self-funding, policy fronting or other mechanisms to avoid risk transfer are not acceptable. If Contractor has such a program, Contractor must fully disclose such program to City.

I. Please comply with the following Sample Insurance Documents.

**COMMERCIAL GENERAL LIABILITY/AUTOMOBILE LIABILITY
SPECIAL ENDORSEMENT – L-15 Form
FOR THE CITY OF GLENDALE, CALIFORNIA**

SPECIFICATIONS NO. _____

This endorsement modifies insurance provided under the following:

- ☐ COMMERCIAL GENERAL LIABILITY INSURANCE COVERAGE PART
- ☐ AUTOMOBILE LIABILITY INSURANCE COVERAGE PART

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or in any endorsement which now or later attaches to the policy, the Company agrees as follows:

ADDITIONAL INSURED: The City of Glendale, its officers, agents and employees are included as additional insureds, with respect to liability and defense of claims and suits arising out of the operations and uses performed by, or on behalf of, the named insured.

CONTRIBUTION WAIVED: This insurance is primary. The City of Glendale insurance program shall be excess of this insurance. The Company shall not seek contribution from the City of Glendale and its insurers.

SEPARATION OF INSURED: This insurance applies separately to each insured against whom claim is made or suit is brought, except that the naming of multiple insureds shall not increase the Company's limits of liability. The inclusion of any person, organization, firm, or entity as an insured under the policy shall not affect any right which such person, organization, firm, or entity would have as a claimant if not so included.

CANCELLATION NOTICE: If the Company elects to cancel or terminate this insurance before the stated expiration date, or declines to renew a continuous policy, or reduces the stated limits other than by impairment of an aggregate limit, the Company shall give written notice to the City of Glendale at least thirty (30) calendar days in advance of such election. For non-payment of premium, the Company shall give the City of Glendale at least ten (10) calendar days advance written notice of cancellation or termination.

Except as stated above, all other endorsements, provisions, conditions, limits and exclusions of this insurance shall remain unchanged.

COMMERCIAL GENERAL LIABILITY
POLICY NUMBER

AUTOMOBILE LIABILITY POLICY
NUMBER

By my signature on this endorsement, I warrant that I have authority to bind the insurance company and do so bind the company to this endorsement:

AUTHORIZED REPRESENTATIVE'S SIGNATURE
DATE SIGNED

GUIDELINES FOR SUBMITTING
EVIDENCE OF INSURANCE
TO THE
CITY OF GLENDALE

**IMPORTANT – PLEASE PROVIDE TO YOUR INSURANCE AGENT
RIGHT AWAY**

1. You must submit to the City a "Certificate of Insurance" from your insurance company for the insurance coverage(s) described in your Contract, the Project Specifications, or both. In Addition, you must submit an "Additional Insured Endorsement" if the Contract and/or Specifications require you to obtain General Liability, Automobile Liability insurance, or both. PLEASE REFER TO YOUR CONTRACT AND PROJECT SPECIFICATIONS FOR A DESCRIPTION OF THE TYPE OF INSURANCE, THE COVERAGE AMOUNT, AND OTHER CONDITIONS. ALL INSURANCE FORMS ARE SUBJECT TO THE CITY'S REVIEW AND APPROVAL.
2. The "Certificate" must state the same information that is printed on the attached sample certificate. A certificate that has missing information or that does not comply with the provisions of your Contract, the Project Specifications, or the City's insurance requirements, may cause a delay in your Contract's approval.
3. Both the "Certificate" and the "Additional Insured Endorsement" must be signed by the company issuing the insurance policy, or an authorized representative who has the authority to bind the insurance company.
4. For faster processing of your Contract, please give the City's "General Liability/Automobile Liability Special Endorsement" to your insurance company, or its authorized representative, for completion of that form. No modifications to the City's form are permitted.
5. If the insurance company or the authorized representative chooses instead to use its own endorsement form, you should allow for extra processing time by the City. The City Risk Manager or City Attorney's office must review all insurance company forms for compliance with your Contract, the Project Specifications, and the City's insurance requirements.

Please return all insurance certificate and endorsement forms to the project manager for this Project.

SAMPLE INSURANCE CERTIFICATE

ACORD TM CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY)
PRODUCER		<p>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</p>
INSURED		
		INSURERS AFFORDING COVERAGE
		INSURER A:
		INSURER B:
		INSURER C:
		INSURER D:
		INSURER E:
COVERAGES		
<p>THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICIES AND INSURANCE. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</p>		
INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER
	<p>GENERAL LIABILITY</p> <p><input type="checkbox"/> COMMERCIAL GENERAL LIABILITY</p> <p><input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR</p> <p>GEN'L AGGREGATE LIMIT APPLIES PER:</p> <p><input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC</p>	
	<p>AUTOMOBILE LIABILITY</p> <p><input type="checkbox"/> ANY AUTO</p> <p><input type="checkbox"/> ALL OWNED AUTOS</p> <p><input type="checkbox"/> SCHEDULED AUTOS</p> <p><input type="checkbox"/> HIRED AUTOS</p> <p><input type="checkbox"/> NON-OWNED AUTOS</p>	
	<p>GARAGE LIABILITY</p> <p><input type="checkbox"/> ANY AUTO</p>	
	<p>EXCESS/UMBRELLA LIABILITY</p> <p><input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE</p> <p><input type="checkbox"/> DEDUCTIBLE</p> <p><input type="checkbox"/> RETENTION \$</p>	
	<p>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</p> <p>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?</p> <p>If yes, describe under SPECIAL PROVISIONS below</p> <p>OTHER</p>	
<p>DESCRIPTION OF OPERATION LOCATIONS (SEE EXCLUSIONS) COVERED BY ENDORSEMENT / SPECIAL PROVISIONS</p> <p>By the attached endorsement, the City of Glendale, its officers, agents, employees, and representatives are added as additional insured under the policy. The insurance is non-contributory and primary to the City's insurance or self-insurance; the insurance and the policy(s) applies separately to each insured against whom a claim is made or a suit is brought; and the issuing company will mail 30 days advance notice to the City for any policy cancellation, termination, or reduction of coverage.</p>		
CERTIFICATE HOLDER		CANCELLATION
<p>City of Glendale</p> <p>Division/Section: _____</p> <p>Address: _____</p> <p>ATTN: Project Manager: _____</p> <p>Contract/Project: _____</p>		<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT:</p> <p>AUTHORIZED REPRESENTATIVE</p>